

LIGHT RAIL TRANSIT AUTHORITY (LRTA), PETITIONER, VS. JOY MART CONSOLIDATED INC., AND ISETANN DEPARTMENT STORE, INC. RESPONDENTS.

G.R. No. 211281. February 15, 2022

Read online (full-text search, related cases, audio case brief): <https://batas.org/library/g-r-no-211281/>

CAGUIOA, J:

The instant controversy traverses two cases involving two decisive points of query that converge on the interplay between the principle of party autonomy, on the one hand, and the provisions of laws that are imbued with public policy, particularly the requirement of public bidding in government contracts, on the other. Given the question of whether parties to a government contract may do away with the required public bidding, the Court reminds, even as it makes clear that the freedom of contract and the autonomy of the parties thereto are not boundless, they are circumscribed, as this case shows, by laws and public policy.

The Facts

G.R. No. 211281 involves the petition of the Light Rail Transit Authority (LRTA) which assails the Decision^[1] dated February 6, 2014 of the Court of Appeals – First Division (CA) in CA-G.R. CV No. 100000. The CA therein upheld the first refusal option of Joy Mart Consolidated, Inc. (Joy Mart) and Isetann Department Store, Inc. (Isetann) to develop the LRT Carriedo Station consolidated block (consolidated block).

G.R. No. 212602 brings to the Court the petition of Joy Mart and Isetann which assails the same CA Decision, as well as the CA Resolution^[2] dated May 19, 2014, with respect to the CA's dismissal of their claim for damages.

The factual backdrop of the instant case involves the government's acquisition of properties for its Light Rail Transit (LRT) system project, which included the property of Joy Mart located along Carriedo Street, Manila. The properties include that lot where Isetann Department Store is located, along with three other adjoining lots (with a total area of 1,611 sq. m.) under lease by Joy Mart. Joy Mart consented to sell its property and give up its leasehold rights over the adjacent properties provided it would be given the first option to redevelop the entire area of the consolidated block of a total of 2,014.9 sq. m., with the same provided for in the whereas clause of the contract.

In September, 1982, while negotiations were underway between Joy Mart and the LRTA, the latter entered into a contract with the Philippine General Hospital Foundation, Inc. (PGHFI), which granted PGHFI the right to develop areas adjacent to the LRT stations, and manage and operate concessions thereon. Later, under a Deed of Absolute Sale (DoAS) dated February 22, 1983, Joy Mart, in consideration of P44,000,000.00 and a supposed first refusal option to redevelop the consolidated block, sold its property and waived its leasehold rights on the adjacent lots in favor of the government through the LRTA.^[3] Pertinent portions of the said DoAS read:

WHEREAS, the VENDEE, upon recommendation of the Special Panel created by the LRT Committee on Land and Property Acquisition agrees that "the owners of Isetann and as Lessee of the President Hotel x x x (Joy Mart Consolidated Corp.) should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property."

NOW THEREFORE, for and in consideration of the foregoing premises, the parties hereto have agreed as follows:

1.

The Sum of FORTY FOUR MILLION PESOS, Philippine Currency will be paid by the VENDEE to the VENDOR for the land consisting of four (4) lots, building, machineries and other improvement, as follows:

1.1.

Twenty-Five Million Pesos ([P]25,000,000.00) as initial payment.

1.2.

Nineteen Million Pesos ([P]19,000,000.00) as soon as the equity funds for the acquisition of properties are made available to the Vendee.

2.

The VENDOR hereby sells, transfers and conveys absolutely and perpetually unto the VENDEE, its successor and assigns the following described parcels of land, building, machineries and improvements thereon free from liens and encumbrances, to wit:[4]

Pursuant to the supposed first refusal option granted to Joy Mart, PGHFI subleased to the former the consolidated block through a sublease agreement entered into on February 1, 1984, the relevant portions of which provide:

WHEREAS, the SUB-LESSOR is the true and registered lessee of a parcel of land, containing a total area of approximately One Thousand One Hundred Forty[-]One Square Meters and Twenty Square Decimeters (1,141.20) located at the former site of Isetann Building and the President Hotel Building in the District of Sta. Cruz, City of Manila, Metro Manila, which parcel of land and the lots comprising it, x x x.

x x x x

WHEREAS, the SUB-LESSOR, as means of generating funds to undertake its worthy projects, has been granted by the Light Rail Transit Authority (LRTA) the right, authority, permit, and license to develop the areas adjacent to the Light Rail Transit System stations, and manage and operate the concessions in such adjacent areas, since the Light Rail Transit System (LRTS) will operate along Caloocan City, Manila, Pasay City and Baclaran, Parañaque.

WHEREAS, the SUB-LESSEE is interest[ed] in sub-leasing the property specified in the first whereas clause hereof (as described in Annexes "A" & "B") under terms and conditions herein below stipulated;

x x x x

In conformity with these aims and to assure that the improvements to be introduced shall [meet the] special needs and requirements of the SUB-LESSEE, the SUB-LESSOR hereby engages the said SUB-LESSEE to design, and, upon previous written approval of the SUB-LESSOR, construct a multi-storey building of first-class materials and suitably air-conditioned, pursuant to plans and specifications mutually agreed upon by the parties. The funds or capital required for the construction and completion of the building to be constructed and improvements to be introduced shall be for the account of the SUB-LESSEE.[5]

On August 30, 1984, an addendum to the sublease was executed between Joy Mart and PGHFI, which amended the sublease to increase the land area referred to therein and the rental fee, and added an escalation clause thereto. Joy Mart was further required to pay a "goodwill" amount of P3,000,000.00.

A little less than two years later, the 1986 EDSA Revolution happened in February 1986.

Nearly three years from the execution of the DoAS[6] in question, or on April 8, 1986, the LRTA, through its then Chairman Hernando B. Perez, wrote[7] Joy Mart to inform the latter that the sublease was rescinded and that it was to pay the rental proceeds not to PGHFI but directly to the LRTA.

Then, on July 21, 1986, over three years from the execution of the DoAS and over two years since Joy Mart and Isetann entered into the cancelled sublease agreement with PGHFI, the LRTA, already under the new administration of President Corazon Aquino, caused the publication of the Notice for Pre-Qualification Bidding for the development of the LRT commercial stalls. During the public bidding that followed, Phoenix Omega Development and Management (Phoenix) made a bid and won.[8]

In November, 1986, proceeding from Phoenix's successful bid, the LRTA entered into a Commercial Stalls Concession Contract[9] with Phoenix, which awarded to the latter all the areas and commercial spaces within three LRT terminals and fifteen LRT stations, including Carriedo Station.

Pursuant to said Commercial Stalls Concession Contract with the LRTA, Phoenix began the construction of the commercial stalls.

Then, on August 20, 1987, or nine months after Phoenix had begun its construction, Joy Mart and Isetann sued the LRTA and Phoenix before Branch 32, Regional Trial Court of Manila (RTC) in a complaint for specific performance, injunction and damages,[10] docketed as Civil Case No. 87-41731. In their complaint, Joy Mart and Isetann claimed that the LRTA violated its first refusal option, and demanded that the LRTA be directed to award to them the redevelopment of the block as well as pay them for damages.[11]

The LRTA, in its answer,[12] countered that the provision in the DoAS mentioning the first refusal option was not a categorical commitment on its part, since it was only contained in the whereas clause thereof. It also averred that, in any case, Joy Mart is considered to have already waived the same when it entered into a sublease with PGHFI. Phoenix, for its part,[13] anchors its defenses on the same arguments submitted by the LRTA, and avers that the first refusal option contained in the whereas clause did not add to the terms, conditions and nature of the contract.

RTC Ruling

In its Decision[14] dated July 16, 2012, the RTC dismissed the complaint of Joy Mart and Isetann, to wit:

WHEREFORE, judgment is hereby rendered dismissing the instant complaint for Specific Performance, Injunction and Damages filed by the plaintiffs against the defendants. The preliminary injunction issued by the court is permanently dissolved.

Further, the counter-claims interposed by the defendants are likewise dismissed[.]

SO ORDERED.[15]

The RTC held that while the first refusal option was part and parcel of the DoAS,[16] the same first refusal option pertains to a public contract undertaken by the LRTA as a government entity, which meant that the right to develop or redevelop any property pursuant to such a public contract required public bidding.[17] For having been granted outside of any public bidding, the RTC ruled that the said first refusal option may not give rise to any preferential right in favor of Joy Mart and Isetann. The RTC reasoned thus:

Plaintiff Joy Mart, being fully cognizant of the fact that LRTA is a government entity, whose power to enter into contract is defined by and subject to the limitations provided by law, should have known and/or is chargeable with the knowledge of these laws and jurisprudence regarding competitive public bidding.

Thus, any right which plaintiff Joy Mart may have derived from the "first option" provision of the Deed of

Absolute Sale should be delimited and compliant with the rules concerning competitive public bidding. And it (plaintiff Joy Mart) cannot come to the court with clean hands to assert that having this right of "first option" pursuant to the Deed of Absolute Sale, any contract for the redevelopment of the areas covered within the consolidated block should automatically be awarded to it without having to undergo the procedures of public bidding provided under the existing rules and jurisprudence.[18]

The RTC further posited that owing to equitable grounds, the first refusal option could have still been complied with had Joy Mart and Isetann simply participated in the bidding process. It reasoned that should Joy Mart's bid equaled that of Phoenix, then it could have been awarded the contract pursuant to its first refusal option.[19]

Joy Mart and Isetann sought a reconsideration[20] of the RTC Decision, which was similarly denied through the Order dated November 20, 2012.[21]

CA Ruling

Ruling on Joy Mart and Isetann's appeal, the CA, in its Decision[22] dated February 6, 2014, reversed the RTC and resolved the appeal in their favor, viz.:

WHEREFORE, the appeal is GRANTED. The assailed Decision is REVERSED and SET ASIDE. The complaint in Civil Case No. 87-41731 is GRANTED. Accordingly the Light Rail Transit Authority is ordered to comply with the parties' 1983 Deed of Sale by granting Joy Mart Consolidated Corporation and/or Isetann Department Store, Inc. the right to redevelop the entire area denominated as the consolidated block of the LRT Carriedo Station and to pay to the latter, by way of compensatory damages, the rentals thereon which are deposited, by way of consignment, with the Regional Trial Court, National Capital Judicial Region, Br. 32, Manila, in Civil Case No. 87-41731. With costs.

SO ORDERED.[23]

The CA found central to the resolution of the appeal the fact that the first refusal option was "the ultimate basis for [Joy Mart and Isetann's] surrender of their properties"[24] and its provision in the whereas clause of the DoAS was effectively "the government's show of gratitude for the former's act of voluntarily cooperating with the government in its pursuit to establish an LRT system." [25] The CA held that due to Joy Mart and Isetann's interest in the consolidated block on which the first refusal option was to be exercised, the preferential right was justified by the pertinent whereas clause in the DoAS, as well as by the vested right that they had thereon.[26]

The CA also ruled that the first refusal option of Joy Mart and Isetann did not violate the requirement of competitive public bidding, since public bidding did not apply in this case due to Joy Mart and Isetann's vested contractual right. Instead, it held that the first refusal option in the redevelopment of the consolidated block was a condition for Joy Mart and Isetann's relinquishment of their property, so that the right they had thereto was a vested one that should have been respected by the LRTA.[27]

It further reasoned that the rationale for the requirement of public bidding was to prevent undue favors towards one party or another. It explained that there was no such danger in the case of Joy Mart and Isetann since the grant of the first refusal option was in furtherance of the interest of the government. It held that the LRTA should have first offered the redevelopment of the consolidated block to Joy Mart and Isetann, and only upon the latter's failure to exercise the right to redevelop should it have put up the same for public bidding.[28] It noted that to hold otherwise would allow the government to "deal dishonorably or capriciously with its citizens." [29]

The CA also found both Phoenix and the LRTA in bad faith. It noted that Phoenix continued the construction of stalls despite the Temporary Restraining Order (TRO) that was issued by the CA-Ninth Division in the related case of CA-G.R. SP No. 15618. For its part, the bad faith of the LRTA was attributable to the fact that it allowed

Phoenix to continue its construction of commercial stalls in the consolidated block despite the fact that the rights to redevelop the same belonged to Joy Mart and Isetann.[30] It held that the LRTA and Phoenix's failure to recognize Joy Mart and Isetann's first refusal option violated the principle of party autonomy in contracts.[31]

The LRTA and Phoenix, on the one hand, and Joy Mart and Isetann, on the other, come before the Court with their petitions, which assail the CA Decision in varying respects.

In G.R. No. 211281, the LRTA appeals the CA Decision on the sole issue that the CA erred in upholding the first refusal option of Joy Mart and Isetann. It avers first that the grant of the first refusal option was invalid since the conditions of the same were not clearly expressed or stated in the body of the contract so that, at best, it was a non-committal statement on the part of the LRTA.[32] It then adds that, in any case, the grant of the first refusal option was invalid since it violated the requirement of public bidding,[33] and should not be given effect.[34] It challenges the CA's pronouncement that the principle of party autonomy prevailed over the public bidding requirement for government contracts, and submits that said principle is not absolute, but is instead circumscribed by provisions of applicable laws, especially those which affect public policy.[35]

The LRTA also argues that even if the first refusal option was validly granted, Joy Mart and Isetann are guilty of estoppel by laches as shown by the following instances: (i) when it entered into a sublease agreement with PGHFI, which effectively recognized PGHFI's prior right to develop the consolidated block; (ii) when it executed an addendum to the sublease contract; (iii) when it failed to exercise its first refusal option after it had notice of the LRTA's cancellation of the sublease agreement with PGHFI; (iv) when it failed to object to the public bidding which Phoenix later won; (v) when it later negotiated with Phoenix for the lease of one of the buildings with commercial stalls; and (vi) when it took over nine months after it found out about the construction, which Phoenix was undertaking, for it to file its complaint against the LRTA and Phoenix.[36]

Finally, it contends that Joy Mart and Isetann are not entitled to the damages for the breach of one of the conditions in the sublease agreement it entered into with PGHFI. The LRTA counters that, as Joy Mart and Isetann so admitted, the lease agreement between the LRTA and PGHFI was rescinded, and therefore the sublease agreement between PGHFI and Joy Mart and Isetann was also terminated.[37] It adds that the claim of financial losses is false since it continues to rent the consolidated block despite the fact that it has the option to surrender it to the LRTA to cut its losses. It notes that if Joy Mart and Isetann were suffering heavy losses, it would not be attributable to the stalls constructed, but to the fact that there is stiff competition in the area where Shoe Mart/SM, Fairmart, Robinsons Supermarket and other commercial establishments are also located.[38]

Joy Mart and Isetann, in their Comment,[39] counter that their first refusal option is valid and remains so despite the general requirement of public bidding in government contracts, and that they are not guilty of estoppel by laches in the protection of said right.[40]

Phoenix, for its part,[41] echoes the arguments of the LRTA, and additionally submits that the claim for damages by Joy Mart and Isetann are unsubstantiated and therefore should not have been awarded.[42]

For their part, in G.R. No. 212602, Joy Mart and Isetann appeal the CA Decision only with respect to its award of damages. They aver that apart from the damages awarded by the CA, they additionally suffered damages in the amount of P489,559,288.80 corresponding to the opportunity loss over the redevelopment of the consolidated block.

Issues

The two threshold points of query for the resolution of the present petitions are as follows:

- (i)

Is the first refusal option of Joy Mart and Isetann valid?

(ii)

Are Joy Mart and Isetann guilty of estoppel by laches?

The Ruling of the Court

On the above central issues, the Court finds for the LRTA and Phoenix.

Preliminarily, the Court notes that the timeline of the facts which gave rise to the instant controversy is crucial in unpacking the dimensions that remain disputed or unproven, which would otherwise bear upon the fair and equitable resolution of this case. To shed further on the Court's ratiocination herein, it finds the following factual observations merited for clarity as well as context.

First, on the cornerstone submission that the first refusal option formed part of the consideration in the DoAS between Joy Mart and the LRTA, the records of the case fail to reflect how Joy Mart and Isetann substantiated in proof that the purchase price of P44,000,000.00 could have been much higher in the absence of the first refusal option (e.g., it was not shown that the P44,000,000.00-price was based on the fair market value or assessed value of the subject property.) Stated differently, there is no showing that sans the first refusal option, the subject property would have fetched a significantly higher purchase price than the one which Joy Mart and Isetann agreed to.

Second, the records of the case are silent on the matter of the significance of PGHFI's involvement, i.e., if the first refusal option was indeed a full commitment on the part of the LRTA, the facts do not show how the LRTA found the need to enter into a lease contract with PGHFI despite its supposed prior commitment to Joy Mart and Isetann. It appears to stand to reason, therefore, that PGHFI's participation was discernibly because both the LRTA and Joy Mart were well-aware of the fact that the first refusal option was a clear circumvention of the requirement of public bidding for government contracts, and hence both had to device a way through which the development of the consolidated block could still be undertaken by them, i.e., via PGHFI through a sublease.

Third, it is also noted that since the first refusal option was not reiterated anywhere else in the body of the contract, and did not have a stipulated period for the same, it brings to the fore the crucial question of whether the first refusal option, without a period fixed, could have ripened into an enforceable right. In this regard, while the whereas clause mentioned the right of first refusal, and which may reasonably be construed as part and parcel of the consideration, the Court is unable to agree with the CA's ruling that despite the public bidding requirement, said clause was validly granted on the basis of the freedom to contract. Contrary to the submission of Joy Mart and Isetann, the Court finds that, at best, the whereas clause is merely a directive that Joy Mart and Isetann, as the language of the clause spells out, "should be given the first option in the redevelopment of the consolidated block." It is not, in itself, a conferment of a first refusal option. Even the phrase "notwithstanding the compensation for their property" may not be given any other meaning than the directive to give the first refusal option is, as it says plainly, not intended to be part of the consideration.

Fourth and finally, even granting in arguendo that the first refusal option was validly constituted, the Court cannot concede that the same privilege was not already deemed waived when Joy Mart and Isetann, aware as they were that the redevelopment was for public bidding, did not object to the same.

The first refusal option was invalid

As settled in jurisprudence, the LRTA is correct in its submission that although the DoAS, in its whereas clause, did say that the first refusal option was granted as a privilege to Joy Mart and Isetann, that same privilege was

invalid from the moment of its grant, and may not be saved by the application of freedom to contract. The reason for this is no other than the rule that such freedom to contract cannot be extended as to permit a contracting away of provisions of law, i.e., the need for public bidding in government contracts, as in this case.

On this score, the RTC correctly found^[43] that since the LRTA is a government entity and the subject matter, i.e., the grant of the first refusal option, involves a public contract which required public bidding, such requirement may not be validly contracted away.

To be sure, the compelling import of public biddings cannot be gainsaid. The Court, in *Manila International Airport Authority v. Mabunay*^[44] (Mabunay), recalled how the longstanding observation of requiring public bidding for government contracts is as purposeful as it is a matter of public policy, to wit:

Indeed, public bidding in government contracts has been observed in this jurisdiction since the time of the Philippine Commission:

Bidding was introduced in the Philippines by the American Laws on Public Bidding until finally Act No. 22 (1900) of the Philippine Commission was enacted which became the first law on public bidding in this jurisdiction. This was followed by several related Acts such as Act Nos. 74 (1901), 82 (1901) and 83 (1901) culminating in the promulgation by President Quezon on February 3, 1936, of Executive Order No. 16 declaring as a general policy that public bidding must be the means adopted in the purchase of supplies, materials and equipment except on very extraordinary cases and with his prior approval. These Acts and Executive Order as well as the rules and regulations promulgated pertinent thereto were later incorporated in the Administrative Code and in subsequent Public Works Acts, although with slight modifications. Up to the present, this policy and medium still hold both in procurement and construction contracts of the government, and the latest enactment relative thereto is Presidential Decree No. 1594 (1978) and its Implementing Rules and Regulations.

As early as 1936, then President Quezon declared as a matter of general policy that Government contracts for public service or for furnishing supplies, materials and equipment to the Government should be subjected to public bidding. There were a number of amendments, the latest of which, Executive Order No. 40 dated June 1, 1963 of President Diosdado Macapagal, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipments to the government or any of its branches, agencies or instrumentalities, shall be entered into without public bidding except for very extraordinary reasons to be determined by a Committee constituted thereunder. Of more recent date is Executive Order No. 301, S. 1987, issued by President Corazon Aquino, which prescribed the guidelines for decentralization of negotiated contracts. Section 1 of this issuance reiterated the legal requirement of public bidding for the award of contracts for public services and for furnishing supplies, materials and equipment to the government, and expressly specified the exceptions thereto.^[45]

Further, the paramount objective and protective necessity of the public requirement of public bidding are not difficult to discern, and literature surmises that across governments, its foremost goals are to ensure economic efficiency, prevent corruption involving taxpayers' money and, ultimately, preserve the people's faith in their government, viz.:

Whenever a government officer is called upon to make decisions of significant economic import, [he/]she may find [him/]herself facing a conflict between the interest of the organization [he/]she represents and [his/]her own personal interest. One of the objectives of the public tender mechanism is to reduce the possibility of favoritism and corruption playing a part in this decision-making process and to maintain integrity in the Government's transactions with private players. This objective also may be defined as the minimization of the "principal agent problem," which arises when an official is given authority to contract on behalf of the Government. Contracting that is tainted by favoritism raises difficulties on a number of levels. First, it poses a

moral problem, as a violation of the public's faith in the Government and in its representatives. It also creates a social problem because a society in which economic survival depends on acquaintance with or the bribery of decision makers is, by definition, a "corrupt" one and is therefore incapable of instilling values of fairness, honesty, volunteerism, and the need to contribute to the community. Worse still, corruption is economically inefficient since favoritism in contracting usually leads to economically suboptimal decisions and adverse economic effects on the economy and the public. Although these inefficiency effects are generally disclosed almost immediately, the more severe consequences — i.e., the negative effects on the Government's credibility and on the public's faith in appointed government officials — will manifest themselves only in the long term.[46]

Jurisprudentially, the Court echoes this when it reminded in *Mabunay* that even the General Appropriations Act, a product of the legislature, may not be construed as to have done away with the public bidding requirement, thus:

By positive provision of the annual General Appropriations Acts government offices and agencies are authorized to enter into contracts for services related or incidental to their respective functions and operations, either through public bidding or negotiated contract, whenever it is impractical or more expensive for the government to directly undertake such functions and operation, subject to accounting or auditing rules and regulations. As earlier stated, these provisions are not to be construed as doing away with the general requirement of public bidding. Indeed, public bidding is the accepted method for arriving at a fair and reasonable price and it ensures that overpricing and favoritism, and other anomalous practices are eliminated or minimized and we reiterate that Section 68 of the General Appropriations Act has not dispensed with such requirement for contracts for services awarded thereunder. Although the legislature in making appropriations under its exclusive jurisdiction leaves largely to administrative discretion the choice of ways and means to accomplish the object of appropriation, that administrative discretion may not transcend the statutes.[47]

As keenly observed by Chief Justice Alexander Gesmundo (Chief Justice Gesmundo), the requirement of public bidding in government contracts is "not an idle ceremony," but is instead a requirement designed to protect the public interest by ensuring a method that arrives at the most fair and reasonable price for the government.[48] As well, as Chief Justice Gesmundo cautions, the public policy requirement of competitive bidding is a clear obstacle that stands in the way towards the vestedness of the first refusal option as *Joy Mart* and *Isetann* would have the Court believe.[49]

The Court is, therefore, not prepared to quietly excuse the circumvention of the public bidding requirement in this case and anchor the same on an equivocal provision, the validity of which is sharply in question, and the waiver of the same, if it was valid at all to begin with, can already be reasonably deduced.

Further case in point is the early case of *Philippine American Life Insurance Co. v. Auditor General*,[50] where the Court expounded on the appreciation of the freedom of contract vis-à-vis state regulations in the exercise of the state's police power and pursuant to public welfare. Involving a reinsurance treaty which was held to be subject to regulation despite the principle of the freedom of contract, the Court elucidated thus:

Viewed from this focal point, there cannot be an impairment of the obligation of contracts. For, the State may, through its police power, adopt whatever economic policy may reasonably be deemed to promote public welfare, and to enforce that policy by legislation adapted to its purpose. We have, in *Abe vs. Foster Wheeler Corporation*, declared that: "The freedom of contract, under our system of government, is not meant to be absolute. The same is understood to be subject to reasonable legislative regulation aimed at the promotion of public health, morals, safety and welfare. In other words, the constitutional guaranty of non-impairment of obligations of contract is limited by the exercise of the police power of the State, in the interest of public health, safety, morals and general welfare." It has been said, and we believe correctly, that "the economic interests of the State may justify the exercise of its continuing and dominant protective power notwithstanding interference with contracts." It bears repetition to state at this point that the Margin Law is part of the economic

"Stabilization Program" of the country.

Tersely put then, "the [constitutional] obligation of contracts provision does not bar a proper exercise of the state's police power." *Nebia vs. New York* reasons out that: "Under our form of government the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest." As emphatic, if not more, is the following from *Norman vs. Baltimore & Ohio Railroad Company*, thus: "Contracts, however express, cannot fetter the constitutional authority of the Congress. Contracts may create rights of property, but when contracts deal with a subject matter which lies within the control of the Congress, they have a congenital infirmity. Parties cannot remove their transactions from the reach of dominant constitutional power by making contracts about them." More. In another case, pronouncement was made that: "Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worthwhile [—] a government which retains adequate authority to secure the peace and good order of society." [51]

Along the same ratiocination, in the later case of *Goldenway Merchandising Corp. v. Equitable PCI Bank*, [52] the Court once more recalled the metes and bounds of the freedom to contract, viz.:

The freedom to contract is not absolute; all contracts and all rights are subject to the police power of the State and not only may regulations which affect them be established by the State, but all such regulations must be subject to change from time to time, as the general well-being of the community may require, or as the circumstances may change, or as experience may demonstrate the necessity. Settled is the rule that the non-impairment clause of the Constitution must yield to the loftier purposes targeted by the Government. The right granted by this provision must submit to the demands and necessities of the State's power of regulation. Such authority to regulate businesses extends to the banking industry which, as this Court has time and again emphasized, is undeniably imbued with public interest. [53]

Simply put, certain limitations attend the autonomy of the will of the parties in contracts. It is not a blanket license for the parties to stipulate anything that they desire into the contract at the expense of limiting positive laws.

In this case, the requirement of public biddings for government contracts — which, it should be added, is considered as having been written into the contracts themselves — is such a limitation. As succinctly provided in Article 1306 of the Civil Code:

The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy. [54]

Still, although the LRTA may have waived its immunity from suit when it entered into a contract with Joy Mart, and may therefore be sued for allegations of bad faith, the Court cannot leap to a further conclusion that the LRTA has similarly waived the requirement for public bidding of its transactions, since public bidding has been jurisprudentially demonstrated to be steeped in overarching policy considerations that are not susceptible to waivers.

To be certain, the Court cannot give its imprimatur to said circumvention, as to do so would send the wrong message of encouraging government entities and private parties to enter into contracts with deliberate disregard of the limitations and governmental procedures that are put in place as safeguards. This is so especially when, as the facts of the instant case show, Joy Mart and Isetann appear to have been very much aware that said grant was invalid or otherwise insufficient to give them a better right over the redevelopment of the consolidated block in

question, for otherwise, they would not have found it necessary to sublease it from PGHFI.

The right of first option, assuming it was enforceable, was effectively waived

Moreover, even if the first refusal option did survive to be enforceable, it was nonetheless waived by Joy Mart and Isetann through a series of clear but foregone opportunities to assert their claim to the right of first option, the earliest of which was when it entered into a sublease with PGHFI, followed by their failure to object to the public bidding that they knew was being conducted for the redevelopment.

It bears repeating that Joy Mart and Isetann's act of entering into a sublease agreement with PGHFI on February 22, 1983 was a positive and express admission and acknowledgment on their part that they did not have a valid or legally enforceable right of first option. If they had such a right, Joy Mart would not have agreed to enter into the sublease and instead would have asserted its claim. The Court finds that the LRTA is correct in arguing that this point in the factual history of the controversy is the earliest known time when, regardless of whether the first refusal option in the DoAS was valid, Joy Mart and Isetann effectively acknowledged that their first refusal option was either insufficient or non-committal,[55] at best, since they found the need to sublease from PGHFI the property they sought to develop.

As early as this point, Joy Mart should have already asserted its claim and should it have met a refusal from LRTA, it should have gone to court. And yet, as shown by the facts and its own admission, Joy Mart did not.

What is more, even if it were argued that Joy Mart's act of entering into the sublease with PGHFI cannot rise to the level of an express admission and acknowledgment of the lack of a right of first option, and assuming there was such a right, such act of sublease is nevertheless tantamount to an express renunciation or waiver thereof. It should be emphasized here that Joy Mart made no qualifications or reservations when it entered into the sublease, i.e., that despite its agreeing to the sublease, it was not renouncing or waiving its supposed right of first option, or abandoning the same. Yet, once more, the records of the case show that Joy Mart said and did nothing.

Then, when Joy Mart and Isetann executed on August 30, 1984 an addendum to the sublease with PGHFI, and even paid a "goodwill" amount at P3,000,000.00, they did so without again making any qualifications or reservations. The records of the case do not show that either Joy Mart or Isetann raised the matter of their first refusal option on the redevelopment when they executed said addendum. Surely, if Joy Mart and Isetann were as persistent on their first refusal option as they aver, they could have easily signified their reservation to reflect the same, i.e., despite their agreeing to the addendum and paying any additional goodwill amount, they were not renouncing or waiving their first refusal option or abandoning the same. This, evidently, they failed to do.

Worse for the case of Joy Mart and Isetann, when they were informed that the grant to PGHFI to redevelop had been rescinded on April 8, 1986, Joy Mart and Isetann had another golden opportunity to insist on their claim of a first refusal option. However, the records similarly do not show that Joy Mart or Isetann raised the matter of their first refusal option at this instance. On the contrary, Joy Mart and Isetann acquiesced to LRTA's demand, and agreed to pay the rental proceeds of the sublease directly to the LRTA without any significant reservations as far as the records will show.[56]

Also at odds with Joy Mart and Isetann's claim is the fact that when the Carriedo Station development was being bidden out on July 21, 1986, or more than three years from the execution of the DoAS, Joy Mart and Isetann continued to sleep on their supposed right. Significantly, even with the knowledge of this bidding call, Joy Mart and Isetann failed to participate or otherwise object to the same on the ground that they had a first refusal option.[57] Since what was being bidden out was the subject of the very right that they were claiming, their failure to object can only be deemed a waiver of that right, or otherwise a foreclosure of the opportunity to assert

such right under the equitable principle of laches.

Having repeatedly failed to raise their purported right of first refusal, Joy Mart and Isetann must be considered estopped by laches, and may no longer claim on their purported right. Indubitably, it was only when Phoenix was on its ninth month of development when Joy Mart and Isetann cried foul and filed a case before the RTC. By then, their successive inactions had already demonstrated either admission and acknowledgment of the lack of a first refusal option, a renunciation, waiver or abandonment thereof or, at the very least, estoppel in pais. Their inactions have unquestionably ripened into estoppel, both by laches and in pais.

Tracing its origins in the principle of equity, estoppel by laches prevents a party from presenting his or her claim "when, by reason of abandonment and negligence, he [or she] allowed a long time to elapse without presenting [it]."[58] In the case of *Regalado v. Go*,[59] the Court explained that estoppel by laches is attended by a negligence or omission that effectively amounts to abandonment of said claim, viz.:

Laches is defined as the "failure or neglect for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier, it is negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it." [60]

Still, in *Figueroa v. People*,[61] the Court recalled that estoppel by laches is one of the ways by which a party may be barred from raising a claim, to wit:

A party may be estopped or barred from raising a question in different ways and for different reasons. Thus, we speak of estoppel in pais, of estoppel by deed or by record, and of estoppel by laches.

Laches, in a general sense, is failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.

The doctrine of laches or of "stale demands" is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.[62]

As applied to this case, the estoppel by laches is appreciated against Joy Mart and Isetann's claim of the first refusal option, given their repeated failure to raise the same even up to the time of the public bidding, which directly affected such option.

To recall the timeline as shown above, some important actions or inactions belie Joy Mart and Isetann's main claim, specifically: (i) despite the first refusal option, they recognized and acceded to the prior right of PGHFI over the subject property, from whom Joy Mart and Isetann subleased the same for purposes of redevelopment; (ii) Joy Mart and Isetann did not participate or otherwise object to the bidding off of the project of redeveloping the subject property even though an award of the redevelopment to another would militate against their first refusal option; and (iii) it took Joy Mart and Isetann nine months from the start of Phoenix's redevelopment construction before they finally brought their cause before the RTC.

The Court likewise finds telling that when Joy Mart and Isetann entered into a sublease agreement with PGHFI, they already recognized the latter's prior right over the subject redevelopment. In other words, entering into the sublease agreement constituted, in and of itself, a belief or an admission on the part of Joy Mart and Isetann that is wholly inconsistent with their position that they are entitled to a first refusal option. This suggests that Joy Mart

and Isetann effectively recognized that the first refusal option was not enforceable per se, or else they would not have found the sublease necessary.

In the meantime, during Joy Mart and Isetann's inaction, the LRTA and Phoenix undertook construction of commercial stalls on the consolidated block.[63]

Given the foregoing tracing of the timeline, the Court also discerns that apart from the mere lapse of time and inaction on the part of Joy Mart and Isetann, the failure of their claim also, and perhaps with more weight, lies in the fact that they also overtly transacted in a way that was diametrically opposed to their claim. These inactions and accessions confirm to the Court either that the first refusal option was non-committal from its inception, or it was otherwise abandoned through Joy Mart and Isetann's own doing or non-doing.

In the final analysis, therefore, pursuant to Article 1433 in relation to Article 1431 of the Civil Code, the act of Joy Mart and Isetann in entering into a sublease with PGHFI to redevelop the consolidated block which at the outset they claim to have a first right over, also works as an estoppel in pais against their claim. The case of *Roblett Industrial Construction Corp. v. Court of Appeals*[64] and *Spouses Chung v. Ulanday Construction, Inc.*,[65] define estoppel in pais, thus:

[E]stoppel in pais arises when one, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, so that he will be prejudiced if the former is permitted to deny the existence of such facts.[66]

Applying the principle of estoppel in pais to the instant case, Joy Mart and Isetann either impliedly consented to the negation of their first refusal option or otherwise tacitly abandoned the same when they agreed to enter into a sublease with PGHFI. Even when said sublease was amended on August 30, 1984,[67] it is not shown that either Joy Mart or Isetann raised the matter of their first refusal option as a claim that should have taken precedence over the contract that the LRTA entered into with PGHFI, which granted the latter the right to redevelop.

Phoenix and the LRTA are not in bad faith

As regards the bad faith imputed to Phoenix and the LRTA, apart from the fact that Phoenix continued its construction of commercial stalls within the consolidated block and allowed tenants to occupy them in seeming violation of the injunctive order from the CA, there was no mention of any other basis to find Phoenix and the LRTA in bad faith.

In this regard, the Court reminds that since the redevelopment awarded to Phoenix was in the nature of a government infrastructure project, no court apart from the Supreme Court had the power, authority or jurisdiction to issue an injunctive writ against it, pursuant to Section 1 of Presidential Decree (P.D.) No. 1818,[68] which prohibits issuances of restraining orders on infrastructure projects. In which case, despite the injunctive writ from the CA, Phoenix was well within its rights to continue its construction, and the LRTA well within its own rights to allow the same, since the injunctive writ that the CA issued against it was a clear contravention of the prohibition under P.D. No. 1818.

Award of damages improper

On the matter of the award of damages, the Court similarly reverses the CA's award for utter lack of legal basis. There is no ground on which to anchor an award for damages, given that the right on which Joy Mart and Isetann stake their claim is undoubtedly inexistent, or granting that it did exist, is invalid for being an admitted circumvention of an important legal requirement that is imbued with public policy and attends all government public transactions.

All these foregoing facts taken together reasonably support a finding that the LRTA well and truly relied upon what appeared to be an implied abandonment of the first refusal option, if any, since the actions and concessions made by Joy Mart and Isetann subsequently negate that claim. Consequently, Joy Mart and Isetann are estopped by laches as well as in pais and barred from raising and recovering upon a claim that they demonstrated against in several important instances throughout their dealings with the LRTA.

Based on the foregoing premises, the petition in G.R. 212602 is DENIED and the petition in G.R. No. 211281 is GRANTED. The Decision dated February 6, 2014 of the Court of Appeals – First Division in CA-G.R. CV No. 100000 and its Resolution dated May 19, 2014 are REVERSED and SET ASIDE. The Decision dated July 16, 2012 of Branch 32, Regional Trial Court of Manila in Civil Case No. 87-41731 is hereby REINSTATED.

SO ORDERED.

Gesmundo, C.J., (Chairperson), see separate opinion.

M. Lopez and J. Lopez, JJ., concur.

Lazaro-Javier, J., Please see Dissenting Opinion.

[*] Also referred to as Joy Mart Consolidated Corp. in some parts of the record.

[1] Rollo (G.R. No. 211281), pp. 33-52. Penned by Associate Justice Normandie B. Pizarro, with Associate Justice Andres B. Reyes (retired Member of the Court) and Associate Justice Manuel M. Barrios concurring.

[2] Rollo (G.R. No. 212602), pp. 45-48.

[3] Rollo (G.R. No. 211281), p. 35.

[4] Id. at 79. Underscoring in the original. Emphasis supplied.

[5] Id. at 105-110.

[6] Id. at 78-83.

[7] Id. at 125.

[8] Id. at 11, 186-187.

[9] Id. at 126-139.

[10] Rollo (G.R. No. 211281), pp. 57-69.

[11] Id. at 68-69.

[12] Id. at 140-150. Answer with Counterclaim and Opposition to the Petition for Preliminary Injunction.

[13] Id. at 151-156. Answer with Compulsory Counterclaim.

[14] Id. at 224-249. Penned by Presiding Judge Thelma Bunyi-Medina.

[15] Id. at 249.

[16] See id. at 241-242.

[17] Id. at 242.

[18] Id. at 246.

[19] Id.

[20] Id. at 250-254.

[21] Id. at 257-D-E.

[22] Supra note 1.

[23] Rollo (G.R. No. 211281), p. 50.

[24] Id. at 44.

[25] Id.

[26] Id.

[27] Id. at 47-48.

[28] Id.

[29] Id. at 48.

[30] Id.

[31] Id. at 50.

[32] Rollo (G.R. No. 211281), p. 19.

[33] Id. at 17.

[34] Id. at 18.

[35] Id.

[36] Id. at 19-20.

[37] Id. at 22-23.

[38] Id. at 23.

[39] Id. at 330-338.

[40] Id.

[41] Id. at 339-345.

[42] Id.

[43] Rollo (G.R. No. 211281), p. 242.

[44] G.R. No. 126151, January 20, 2000, 322 SCRA 760.

[45] Id. at 766-767.

[46] Dekel, Omer, The Legal Theory of Competitive Bidding for Government Contracts, Public Contract Law Journal, Vol. 37, No. 2, p. 241.

[47] Manila International Airport Authority v. Mabunay, supra note 44, at 767-768. Emphasis supplied.

[48] Concurring Opinion of Chief Justice Alexander G. Gesmundo, p. 7.

[49] *Id.* at 18.

[50] G.R. No. L-19255, January 18, 1968, 22 SCRA 135.

[51] *Id.* at 145-147. Citations omitted and emphasis supplied.

[52] 706 Phil. 427 (2013).

[53] *Id.* at 440-441. Emphasis supplied.

[54] Emphasis supplied.

[55] See rollo (G.R. No. 211281), p. 19.

[56] *Id.* at 11.

[57] See *id.* at 19.

[58] *International Banking Corp. v. Yared*, 59 Phil. 72, 92 (1933).

[59] G.R. No. 167988, February 6, 2007, 514 SCRA 616.

[60] *Id.* at 635.

[61] G.R. No. 147406, July 14, 2008, 558 SCRA 63.

[62] *Id.* at 73.

[63] Rollo (G.R. No. 211281), p. 13.

[64] G.R. No. 116682, January 2, 1997, 266 SCRA 71.

[65] 647 Phil. 1 (2010).

[66] *Roblett Industrial Construction Corp. v. Court of Appeals*, *supra* note 64, at 76; See also *Spouses Chung v. Ulanday Construction, Inc.*, *id.* at 15. Italics supplied.

[67] Rollo (G.R. No. 211281), p. 11.

[68] Section 1. No court in the Philippines shall have jurisdiction to issue any restraining order, preliminary injunction, or preliminary mandatory injunction in any case, dispute, or controversy involving an infrastructure project, or a mining, fishery, forest or other natural resource development project of the government, or any public utility operated by the government, including among others public utilities for the transport of the goods or commodities, stevedoring and arrastre contracts, to prohibit any person or persons, entity or governmental official from proceeding with, or continuing the execution or implementation of any such project, or the operation of such public utility, or pursuing any lawful activity necessary for such execution, implementation or operation.

G.R. No. 211281 (Light Rail Transit Authority, petitioner vs. Joy Mart Consolidated Inc.[*] and Isetann Department Store, Inc., respondents); G.R. No. 212602 (Joy Mart Consolidated, Inc. and Isetann Department Store, Inc., petitioners vs. Light Rail Transit Authority and Phoenix Omega Development and Management Corp., respondents).

SEPARATE CONCURRING OPINION

GESMUNDO, C.J.:

Before the Court are two consolidated petitions: in G.R. No. 211281, it assails the Decision^[1] dated February 6, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 100000, upholding the right of first option of Joy Mart Consolidated, Inc. (Joy Mart) and Isetann Department Store, Inc. (Isetann) to develop the consolidated block of the Light Rail Transit (LRT) Carriedo station; and in G.R. No. 212602, it assails the same decision and the Resolution dated May 19, 2014 insofar as said rulings dismissed Joy Mart's claim for damages.

These cases stemmed from the government's effort to establish the LRT system to service transportation of the commuting public from Baclaran to Balintawak Monument and vice versa. The property of Joy Mart in Carriedo Street, Sta. Cruz, Manila, where Isetann is located, and three other adjoining parcels of land, with a total area of 1,611 square meters (sq. m.), on which stands the President Hotel and is leased by Joy Mart, were among the properties that would be needed for the LRT system and were being considered for expropriation should negotiations for their acquisition fail. According to the CA, as a gesture of cooperation with the government, Joy Mart consented to sell the property and give up its leasehold rights over the adjacent properties provided that it be given the first option to redevelop the entire area denominated as the consolidated block, totalling 2,014 sq. m.,^[2] of the LRT Carriedo station encompassing Joy Mart's properties.^[3]

On September 8, 1982, Light Rail Transit Authority (LRTA) executed an agreement with the Philippine General Hospital Foundation, Inc. (PGHFI), a non-governmental organization, granting the latter the right, permit, authority, and license to develop the areas adjacent to LRTA's property and to manage and operate the concession areas.

On February 22, 1983, Joy Mart conveyed its property, consisting of 403.8 sq. m.^[4] in the consolidated block, to LRTA under a deed of absolute sale (1983 Deed of Sale) for the consideration of P44,000,000.00. According to the CA, Joy Mart also waived its leasehold rights on the adjacent lots in favor of the government, through LRTA.^[5] The 1983 Deed of Sale provided among other things, that "upon recommendation of the Special Panel created by the LRT Committee on Land and Property Acquisition [the vendee] agrees that the owners of Isetann and as Lessee of the President Hotel . . . (Joy Mart Consolidated Corp.) should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property."^[6]

On February 1, 1984, LRTA executed a lease agreement with PGHFI, where the latter leased the whole consolidated block of LRTA's now 2,014-sq. m. property.^[7] On July 15, 1984, the lease agreement with PGHFI was amended and the leased area was reduced to 1,461 sq. m.^[8]

After more than a year since the execution of the 1983 Deed of Sale, on June 18, 1984, Joy Mart entered into a sublease agreement with PGHFI, where Joy Mart subleased 1,141.2 sq. m. of the consolidated block from PGHFI.^[9] On August 30, 1984, an addendum to the sublease agreement was executed between Joy Mart and PGHFI increasing the area to be used and occupied by Joy Mart from 1,141.2 sq. m. to 1,461.7 sq. m. Aside from the increase of monthly rental and provision for an escalation clause, Joy Mart was made to pay, and did pay, "goodwill" in the sum of P3 Million.^[10] Joy Mart then constructed an eight-storey building with 10 fully air-conditioned levels in the leased area.^[11]

On March 31, 1986, LRTA cancelled its lease agreement with PGHFI and, in its April 8, 1986 Letter, LRTA informed Joy Mart of this cancellation^[12] and that Joy Mart direct its payments for the sublease to LRTA.^[13]

On July 21, 1986, LRTA published in the Bulletin Today a notice for pre-qualification and bidding for the LRT commercial stalls beneath the three LRT terminal stations, which included the remaining 553.2 sq. m. portion of

the consolidated block not leased by Joy Mart.[14] Three bidders participated, including Phoenix Omega Development and Management Corporation (Phoenix).[15] Joy Mart did not participate in the public bidding.

On November 28, 1986, LRTA and Phoenix executed a Commercial Stalls Concession Contract.[16] According to Joy Mart, it learned of the contract between LRTA and Phoenix when the latter's construction activities commenced within the consolidated block of the LRT Carriedo station. Joy Mart then filed a complaint for specific performance and damages against LRTA and Phoenix because LRTA allegedly breached the right of first option granted to Joy Mart when Phoenix was granted the agreement within the consolidated block.[17]

The RTC ruled in favor of LRTA and Phoenix. It held, among others, that while LRTA granted a first option provision to Joy Mart, the former may not be bound because it is a government entity whose contracts are subject to competitive public bidding.[18] On appeal, the CA held that under the contested right of first option, the LRTA should have first offered redevelopment of the premises to Joy Mart, and only if the latter fails to exercise its right of first priority could LRTA lawfully put up the same for public bidding.[19]

Hence, LRTA filed a petition for review on certiorari assailing that the CA seriously erred in upholding the right of first option in favor of Joy Mart;[20] while Joy Mart filed a petition for review on certiorari arguing that the award of compensatory damages in its favor should be increased to P489,559,288.80.[21]

Associate Justice Amy C. Lazaro-Javier's Dissenting Opinion (Dissenting Opinion) held that Joy Mart and Isetann had the right of first option, which should be construed as a right of first refusal, hence, LRTA erred when it did not honor such right; that the sublease between PGHFI and Joy Mart constituted as partial compliance of LRTA with respect to the first option right of Joy Mart; that public bidding could be excused in favor of Joy Mart and Isetann due to the purported first option right; and, that Joy Mart and Isetann should be granted damages in the form of 25 years of deposited rental income under the commercial stalls concession contract between LRTA and Phoenix.

After reviewing the pleadings submitted by the parties, I share a different view with the Dissenting Opinion.

The right of first refusal has no legal basis.

The basis of Joy Mart's first option right is one of the whereas clauses in the 1983 Deed of Sale[22] between Joy Mart and LRTA for the sale of Joy Mart's 403.8-sq. m. lot, which provides:

WHEREAS, the VENDEE, upon recommendation of the Special Panel created by the LRT Committee on Land and Property Acquisition agrees that "the owners of Isetann and as Lessee of the President Hotel ... (Joy Mart Consolidated Corp.) should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property." [23]

According to the Dissenting Opinion, this first option allegedly given by LRTA to Joy Mart, provided in the whereas clause, should be treated as a right of first refusal, to wit:

Verily, "right of first option" is actually a misnomer in this case. For in the absence of a specific period to exercise such right, Joy Mart and Isetann's right is actually one of first refusal. There is no fixed timeframe for them to exercise such right as it first required LRTA to offer them the redevelopment contract on specific terms.

Though different from an option contract, contractual stipulations on the right of first refusal are just as valid and binding. Here, the LRTA bound itself to respect Joy Mart and Isetann's right of first refusal upon signing the Deed of Absolute Sale was executed on February 22, 1983. Whereupon, Joy Mart's "right of first option" became a vested right protected by law, viz.:

A vested right is defined as one which is absolute complete[,] and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny.

Indeed, the LRTA, which freely signed the Deed of Absolute Sale dated February 22, 1983, cannot now be permitted to renege on its obligation under the contract simply because it has changed its mind. As Article 1308 of the Civil Code decrees: a contract is binding on both contracting parties; its validity or compliance cannot be left to the will of one of them.

The right also subsists despite the cancellation of the lease between PGHFI and LRTA as well as the sublease agreement as its existence was not dependent thereon. In fact, the sublease agreement, as correctly found by the Court of Appeals, was executed in partial compliance with Joy Mart's right of first option and not the other way around.[24]

I respectfully disagree.

The purported right of first option was granted by LRTA, a government instrumentality, to Joy Mart under a whereas clause. A right of first refusal is a contractual grant, not of the sale of a property, but of the first priority to buy the property in the event the owner sells the same. As distinguished from an option contract, in a right of first refusal, while the object might be made determinate, the exercise of the right of first refusal would be dependent not only on the owner's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that are yet to be firmed up.[25]

The right of first refusal has long been recognized, both legally and jurisprudentially, as valid in our jurisdiction. It is significant to note, however, that in those cases where the right of first refusal is upheld by both law and jurisprudence, the party in whose favor the right is granted has an interest on the object over which the right of first refusal is to be exercised. In those instances, the grant of the right of first refusal is a means to protect such interest.[26]

Stated differently, before a right of first refusal can be legally valid, it must be based on an existing interest on an object. For instance, there may be a valid right of first refusal granted to the lessee by the lessor in a contract of lease. When a lease contains a right of first refusal, the lessor has the legal duty to the lessee not to sell the leased property to anyone at any price until after the lessor has made an offer to sell the property to the lessee. Only after the lessee has failed to exercise his right of first refusal could the lessor sell the property to other buyers under the same terms and conditions offered to the lessee, or under terms and conditions more favorable to the lessor.[27]

The rationale for this doctrine is that the lessee has an existing interest on the property subject of the lease, particularly, the right of possession over the property under the contract of lease. Thus, since the lessee has a right of possession over the property, it is reasonable for the lessee to have first priority over it before the lessor could sell the property subject of the lease to a third person. Evidently, the grantee must have a clear interest on the object, from which the right of first refusal emanates.

Accordingly, when the party seeking to exercise the right of first refusal has a vested interest in, if not a right to, the subject of the right of first refusal, then such right should be recognized. Thus, on account of such interest, a tenant (with respect to the land occupied), a lessee (vis-à-vis the property leased), a stockholder (as regards shares of stock), and a mortgagor (in relation to the subject of the mortgage), are all granted first priority to buy the property over which they have an interest in the event of its sale.[28]

On the other hand, public bidding is the established procedure in the grant of government contracts. The award of public contracts, through public bidding, is a matter of public policy. In the award of government contracts, the law requires a competitive public bidding, which aims to protect the public interest by giving the public the best possible advantages through open competition. It is a mechanism that enables the government agency to avoid or preclude anomalies in the execution of public contracts.[29]

The requirement of public bidding is not an idle ceremony. It is the accepted method for arriving at a fair and reasonable price. It ensures that overpricing, favoritism, and other anomalous practices are eliminated or minimized.[30] The history of public bidding in government procurement was explained in *Abaya v. Ebdane, Jr.*: [31]

It is necessary, at this point, to give a brief history of Philippine laws pertaining to procurement through public bidding. The United States Philippine Commission introduced the American practice of public bidding through Act No. 22, enacted on October 15, 1900, by requiring the Chief Engineer, United States Army for the Division of the Philippine Islands, acting as purchasing agent under the control of the then Military Governor, to advertise and call for a competitive bidding for the purchase of the necessary materials and lands to be used for the construction of highways and bridges in the Philippine Islands. Act No. 74, enacted on January 21, 1901 by the Philippine Commission, required the General Superintendent of Public Instruction to purchase office supplies through competitive public bidding. Act No. 82, approved on January 31, 1901, and Act No. 83, approved on February 6, 1901, required the municipal and provincial governments, respectively, to hold competitive public biddings in the making of contracts for public works and the purchase of office supplies.

On June 21, 1901, the Philippine Commission, through Act No. 146, created the Bureau of Supply and with its creation, public bidding became a popular policy in the purchase of supplies, materials and equipment for the use of the national government, its subdivisions and instrumentalities. On February 3, 1936, then President Manuel L. Quezon issued Executive Order No. 16 declaring as a matter of general policy that government contracts for public service or for furnishing supplies, materials and equipment to the government should be subjected to public bidding. The requirement of public bidding was likewise imposed for public works of construction or repair pursuant to the Revised Administrative Code of 1917.

Then President Diosdado Macapagal, in Executive Order No. 40 dated June 1, 1963, reiterated the directive that no government contract for public service or for furnishing supplies, materials and equipment to the government or any of its branches, agencies or instrumentalities, should be entered into without public bidding except for very extraordinary reasons to be determined by a Committee constituted thereunder. Then President Ferdinand Marcos issued PD 1594 prescribing guidelines for government infrastructure projects and Section 4 thereof stated that they should generally be undertaken by contract after competitive public bidding.

Then President Corazon Aquino issued Executive Order No. 301 (1987) prescribing guidelines for government negotiated contracts. Pertinently, Section 62 of the Administrative Code of 1987 reiterated the requirement of competitive public bidding in government projects. In 1990, Congress passed RA 6957, which authorized the financing, construction, operation and maintenance of infrastructure by the private sector. RA 7160 was likewise enacted by Congress in 1991 and it contains provisions governing the procurement of goods and locally-funded civil works by the local government units.

Then President Fidel Ramos issued Executive Order No. 302 (1996), providing guidelines for the procurement of goods and supplies by the national government. Then President Joseph Ejercito Estrada issued Executive Order No. 201 (2000), providing additional guidelines in the procurement of goods and supplies by the national government. Thereafter, he issued Executive Order No. 262 (2000) amending EO 302 (1996) and EO 201 (2000).

On October 8, 2001, President Gloria Macapagal-Arroyo issued EO 40, the law mainly relied upon by the respondents, entitled Consolidating Procurement Rules and Procedures for All National Government Agencies,

Government-Owned or Controlled Corporations and Government Financial Institutions, and Requiring the Use of the Government Procurement System. It accordingly repealed, amended or modified all executive issuances, orders, rules and regulations or parts thereof inconsistent therewith.

On January 10, 2003, President Arroyo signed into law RA 9184. It took effect on January 26, [2003], or fifteen days after its publication in two newspapers of general circulation. x x x

x x x x

In addition to these laws, RA 4860, as amended, must be mentioned as Section 4 thereof provides that "[i]n the contracting of any loan, credit or indebtedness under this Act, the President of the Philippines may, when necessary, agree to waive or modify the application of any law granting preferences or imposing restrictions on international competitive bidding x x x Provided, finally, That the method and procedure in the comparison of bids shall be the subject of agreement between the Philippine Government and the lending institution." [32]

Evidently, with respect to the government procurement of goods, services, or infrastructure, competitive public bidding is the mandated general rule. Only in very exceptional circumstances may competitive public bidding be set aside.

In *Land Transportation Franchising and Regulatory Board v. Stronghold Insurance Co., Inc.*, [33] it was explained that when there is a contractual stipulation, such as right of first refusal, that contravenes or negates the requirement of public bidding, such stipulation is not favorably looked upon and strictly construed, viz.:

In the field of public contracts, these stipulations are weighed with the taint of invalidity for contravening the policy requiring government contracts to be awarded through public bidding. Unless clearly falling under statutory exceptions, government contracts for the procurement of goods or services are required to undergo public bidding "to protect the public interest by giving the public the best possible advantages [through] open competition." The inclusion of a right of first refusal in a government contract executed post-bidding, as here, negates the essence of public bidding because the stipulation "gives the winning bidder an x x x advantage over the other bidders who participated in the bidding x x x." Moreover, a "right of first refusal," or "right to top," whether granted to a bidder or non-bidder, discourages other parties from submitting bids, narrowing the number of possible bidders and thus preventing the government from securing the best bid.

These clauses escape the taint of invalidity only in the narrow instance where the right of first refusal (or "right to top") is founded on the beneficiary's "interest on the object over which the right of first refusal is to be exercised" (such as a "tenant with respect to the land occupied, a lessee vis-à-vis the property leased, a stockholder as regards shares of stock, and a mortgagor in relation to the subject of the mortgage") and the government stands to benefit from the stipulation. Thus, we upheld the validity of a "right to top" clause allowing a private stockholder in a corporation to top by 5% the highest bid for the shares disposed by the government in that corporation. Under the joint venture agreement creating the corporation, a party had the right of first refusal in case the other party disposed its shares. The government, the disposing party in the joint venture agreement, [benefited] from the 5% increase in price under the "right to top," on outcome better than the right of first refusal. [34] (emphasis supplied)

In *Power Sector Assets and Liabilities Management Corp. v. Pozzolan Philippines, Inc.*, [35] the right of first refusal granted to a private entity against the property of the State was not recognized because it violated the general rule of requiring competitive public bidding in the award of government contracts. It was therein underscored that the right of first refusal of the private entity had no leg to stand on as the latter did not have any actual interest on the object over which the right of first refusal was supposed to be exercised. "[T]here is no basis whatsoever for the grant to respondent [or the private entity] of the right of first refusal with respect to the fly ash of NPC power plants since the right to purchase at the time of bidding is that which is precisely the bidding subject, not yet existent much more vested in respondent." [36]

Similarly, in *Land Transportation Franchising and Regulatory Board v. Stronghold Insurance Co., Inc.*,^[37] the right to match, which is a modification of the right of first refusal, was not recognized by the Court. It was underscored therein that said right cannot be effectuated because there is no "object" over which the private entity can claim an interest. In other words, the private entity did not have interest on the object over which the purported right was to be exercised.

More recently, in *Osmeña III v. Power Sector Assets and Liabilities Management Corp.*,^[38] the right to top, which is another variation of the right of first refusal, was also not recognized in favor of a private entity, SPC Power Corporation (SPC), against the government. The rule on competitive public bidding was likewise not followed therein. It was highlighted that SPC's right to top is void for lack of a valid interest or right to the object over which the right of first refusal was to be exercised. The Court explained that the property subject of the right to top was outside the leased premises and referred not only to land, but to any property within the vicinity of the leased premises, including the entire power plant complex and the land on which it is built. Evidently, the right to top is greatly excessive compared to the object over which the said right was supposed to be exercised.

In contrast, in *JG Summit Holdings, Inc. v. Court of Appeals*,^[39] the Court applied the exception to the rule. It recognized that a private entity had a right to first refusal, without requiring public bidding. Nevertheless, it was emphasized therein that the right of first refusal was based on an existing interest in the joint venture, particularly, Kawasaki being a shareholder in the same joint venture.

Hence, the Court should thoroughly examine the purported right of first refusal granted by LRTA to Joy Mart in the 1983 Deed of Sale, for the latter's sale of a 403.8-sq. m. lot, with the highest degree of scrutiny. As stated above, in a government contract, competitive public bidding is the mandatory general rule. In this case, the right of first refusal would allow Joy Mart unfettered right to develop the consolidated block, totalling 2,014 sq. m., without the benefit of any public bidding. As Joy Mart claims, it should have been offered the right to develop the whole consolidated block, which includes the 553.2 sq. m. granted to Phoenix, even though it was Phoenix that participated and won the competitive public bidding.

I find that the purported right of first refusal granted to Joy Mart is ineffective to acquire the right to develop the whole 2,014-sq. m. consolidated block which includes the 553.2-sq. m. portion granted to Phoenix.

As discussed above, the right of first refusal is valid only when a party in whose favor the right is granted has an interest on the object over which the right of first refusal is to be exercised. In other words, the grantee of the right of first refusal must have an interest on the subject property over which the right of first refusal is to be exercised. Again, the basis of the right of first refusal of the grantee is its existing interest over the subject property, whether it be a right of ownership, possession, or encumbrance. If the grantee of the right of first refusal does not have any existing interest on the subject property, there is no basis for the exercise of such right.

Here, before the 1983 Deed of Sale was executed, Joy Mart had ownership and possession of a 403.8-sq. m. portion of the consolidated block.^[40] However, when Joy Mart executed the 1983 Deed of Sale in favor of LRTA, which contained the purported right of first refusal, it conveyed the said property to LRTA. Thus, upon the execution of said deed, Joy Mart no longer had any right whatsoever over the subject property, including the 403.8-sq. m. portion of the consolidated block. It no longer had any interest over the said property, be it of ownership, possession, encumbrance, or even the right to the fruits or rentals therefrom. The CA found Joy Mart to have even waived its leasehold rights on the adjacent lots in favor of the government, through LRTA, in the 1983 Deed of Sale.^[41]

The purported right of first refusal of Joy Mart in the 1983 Deed of Sale has no leg to stand on because it had no interest over the subject property on which the said right depends. Joy Mart no longer had interest over the

403.8-sq. m. portion of the consolidated block. The right of first refusal cannot be validly exercised since the party in whose favor the purported right was granted had no interest on the object over which the said right of refusal was to be exercised.

In fact, the lack of interest over the consolidated block became more apparent when, after more than a year since the execution of the 1983 Deed of Sale, Joy Mart had to enter into a sublease agreement, on June 18, 1984, for the 1,141.2-sq. m. portion of the consolidated block from PGHFI,[42] which was eventually increased to 1,461.7 sq. m. However, it must be noted that even with the sublease, Joy Mart still did not have any interest in the remaining 553.2-sq. m. portion granted to Phoenix through public bidding in 1986, whether in the form of ownership, possession, or encumbrance.

Further, Joy Mart's claim that the 1983 Deed of Sale of the 403.8-sq. m. portion gave it the right of first refusal to redevelop the entire consolidated block is unmeritorious. To put things into perspective, the consolidated block consists of 2,014 sq. m., while the 1983 Deed of Sale only pertains to a 403.8-sq. m. portion. Pursuant to the 1983 Deed of Sale, Joy Mart conceded all interest over the 403.8-sq. m. portion; hence, it would be illogical if the same contract would give Joy Mart unfettered right to the entire 2,014-sq. m. property, which at that time, Joy Mart no longer had interest in. Joy Mart cannot extend its rights beyond the subject property covered by the 1983 Deed of Sale.

In addition, in its Complaint for Specific Performance, Injunction, and Damages,[43] Joy Mart seeks to acquire the right to redevelop the remaining 553.2-sq. m. portion of the consolidated block granted to Phoenix. However, Joy Mart no longer has any interest on the said portion. It neither has ownership nor possession over the specific 553.2-sq. m. portion of the consolidated block, such portion being excluded from the lease of Joy Mart. As discussed above, the right of first refusal cannot be exercised when there is no existing interest on the subject property. Such right must be based on an actual interest over the property, and it cannot stand alone.

In fine, the general rule prevails in this case. Competitive public bidding is mandatory in government contracts. In the field of public contracts, stipulations are weighed with the taint of invalidity for contravening the policy requiring government contracts to be awarded through public bidding. The right of first refusal invoked by Joy Mart is doubtful because it did not have any interest on the subject property, consisting of 403.80 sq. m., due to the execution of the 1983 Deed of Sale. Thus, such right of first refusal cannot be invoked by Joy Mart, disregarding the rule on public bidding, to redevelop the entire consolidated block to the detriment of those who participated in the said competitive public bidding, Phoenix being one.

The subsequent acts of Joy Mart are inconsistent with its claim of right of first refusal.

There is an ambiguity in the whereas clause invoked by Joy Mart in its 1983 Deed of Sale. According to the Dissenting Opinion, the purported right of first option could be treated as a right of first refusal. However, as thoroughly discussed above, such position is untenable.

The whereas clause does not provide the manner by which Joy Mart would exercise its "first option in the redevelopment of the consolidated block." [44] As such, there could be numerous outcomes from that phrase of the whereas clause. It may imply that the right of possession of the consolidated block would temporarily be given to Joy Mart for redevelopment, and after completing the redevelopment, possession of the said block would be returned to the State. Another interpretation is that the right of possession of the consolidated block would be given to Joy Mart and, upon completion of the consolidated block, Joy Mart would have the right to operate the property, and only upon realizing profit shall the property be returned to the State. Again, ambiguities in the 1983 Deed of Sale do not settle the manner by which such right of first option shall be exercised.

The consideration in exchange for the right of first option, too, is unclear. The whereas clause only provides that Joy Mart "should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property."^[45] Whether separate compensation was given by Joy Mart to the State for the consideration of such right of first option, or whether the consideration was already incorporated in the purchase price given by the State to Joy Mart in exchange for the property, is not clear in the text of the 1983 Deed of Sale.

In *Abad v. Goldloop Properties, Inc.*,^[46] the Court held that when there is ambiguity in the contract, which can be subject to two or more interpretations, the court should step in to interpret the same:

The cardinal rule in the interpretation of contracts is embodied in the first paragraph of Article 1370 of the Civil Code: "[i]f the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control." This provision is akin to the "plain meaning rule" applied by Pennsylvania courts, which assumes that the intent of the parties to an instrument is "embodied in the writing itself, and when the words are clear and unambiguous the intent is to be discovered only from the express language of the agreement." It also resembles the "four corners" rule, a principle which allows courts in some cases to search beneath the semantic surface for clues to meaning. A court's purpose in examining a contract is to interpret the intent of the contracting parties, as objectively manifested by them. The process of interpreting a contract requires the court to make a preliminary inquiry as to whether the contract before it is ambiguous. A contract provision is ambiguous if it is susceptible of two reasonable alternative interpretations. Where the written terms of the contract are not ambiguous and can only be read one way, the court will interpret the contract as a matter of law. If the contract is determined to be ambiguous, then the interpretation of the contract is left to the court, to resolve the ambiguity in the light of the intrinsic evidence.^[47]

In this case, the above-cited provision is subject to different interpretations, thus, the proper interpretation of the contract can be determined by the Court. Further, Articles 1370 and 1371 of the New Civil Code provide:

Article 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.

If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

Article 1371. In order to judge the intention of the contracting parties, their contemporaneous and subsequent acts shall be principally considered. (emphasis supplied)

In this case, I find the subsequent acts of Joy Mart, after execution of the 1983 Deed of Sale, contrary to its claim of having a right of first refusal over the entire consolidated block. I agree with the ponencia that "[i]t bears repeating that Joy Mart and Isetann's act of entering into a sublease agreement with PGHFI on February 22, 1983 was a positive and express admission and acknowledgment on their part that they did not have a valid or legally enforceable right of first option. If they had such a right, Joy Mart would not have agreed to enter into the sublease and instead would have asserted its claim."^[48]

Indeed, if Joy Mart claims having right of first refusal over the consolidated block by virtue of the 1983 Deed of Sale, then it should have invoked the same to exercise its right to redevelop the same. Joy Mart could have simply raised its purported right of first refusal at the first instance when LRTA sought to develop the property. Glaringly, on February 1, 1984, when LRTA executed a lease agreement with PGHFI, where the latter leased the whole consolidated block of LRTA's 2,014-sq. m. property,^[49] Joy Mart did not lift a finger. It did not assert, against LRTA, having a purported right of first refusal against the entire block.

Instead, Joy Mart did the opposite. It conceded that it did not have any interest over the consolidated block. Joy Mart had to enter in a sublease agreement on June 18, 1984 with PGHFI for the 1,141.2-sq. m. portion of the consolidated block,^[50] which was eventually increased to 1,461.7 sq. m. It was only upon this sublease that Joy

Mart regained any sort of interest, particularly, the right to possession, over a portion of the consolidated block. For an entity which purportedly had a right to redevelop the entire 2,014-sq. m. property upon the execution of the 1983 Deed of Sale, it is bewildering that Joy Mart had to sublease the same property on which it allegedly had an interest on. These acts are definitely inconsistent with one another.

I likewise share the view of the ponencia that Joy Mart's "successive inactions had already demonstrated either admission and acknowledgment of the lack of a first refusal option, a renunciation, waiver or abandonment thereof or, at the very least, estoppel in pais."^[51] Estoppel is a doctrine that prevents a person from adopting an inconsistent position, attitude, or action if it will result in injury to another. One who, by his acts, representations or admissions, or by his own silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and such other rightfully relies and acts on such belief, can no longer deny the existence of such fact as it will prejudice the latter.^[52]

Joy Mart's conduct of subleasing a substantial portion of the consolidated block from PGHFI on June 18, 1984, which included payment of rentals, is contradictory to its claim of having the right to redevelop the entire consolidated block upon execution of the 1983 Deed of Sale.

SM Land, Inc. v. Bases Conversion and Development Authority^[53] (SMLI v. BCDA) is not applicable.

The Dissenting Opinion relied on SMLI v. BCDA to justify that the government may be estopped from conducting public bidding.^[54] It was underscored therein that the Court should not allow the government to deal dishonorably or capriciously with its citizens.^[55]

I respectfully disagree that SMLI v. BCDA is applicable.

In that case, BCDA opened for disposition and development its Bonifacio South Property, a 33.1-hectare expanse located in Taguig City. SMLI submitted an unsolicited proposal for the development of the lot through a public-private joint venture agreement. The unsolicited proposal, with guaranteed secured payments, amounted to P32,501.00/sq. m. for a total of P22.6 Billion. Thereafter, BCDA created a Joint Venture Selection Committee (JV-SC). Through a letter dated May 12, 2010, BCDA communicated to SMLI its acceptance of the unsolicited proposal.^[56]

Afterwards, the JV-SC and SMLI embarked on a series of detailed negotiations and, on July 23, 2010, SMLI submitted its final revised proposal with guaranteed secured payments amounting to a total of P25.9 Billion. Afterwards, a certification of successful negotiations (Certification) was issued by BCDA, stating that SMLI's proposal shall be submitted to competitive challenge. Pursuant to the preparations of the competitive challenge, SMLI posted a security bond in the amount of P187 Million, under NEDA JV Guidelines.^[57]

However, after two years, BCDA did not proceed with the competitive challenge. In response, SMLI proposed to increase the total secured payments to P22.436 Billion in over 15 years with an upfront payment of P3 Billion, and increase the net present value of the property to P38,500.00/sq. m. However, BCDA moved for the termination of the competitive challenge and, instead, proposed to submit the development project to competitive public bidding. Hence, SMLI challenged BCDA's cancellation of the competitive challenge.^[58]

The Court held, among others, that BCDA erred in not proceeding with the competitive challenge. It was underscored therein that under the NEDA JV Guidelines, once the original proponent (SMLI), hurdled the first two stages of the Swiss Challenge Framework provided, which consists of the submission and evaluation of the unsolicited proposal and the conduct of detailed negotiations, it was mandatory to conduct the third stage – the competitive challenge. Thus, the efforts of SMLI, including the posting of the P187 Million security, cannot simply be set aside by BCDA. Likewise, it was therein emphasized that the government was estopped from

reneging the accepted unsolicited proposal of SMLI as the latter had already invested time, effort, and resources in the study and formulation of the proposal, in the adjustment thereof, as well as in the negotiations. The Court concluded that BCDA cannot unjustly enrich itself through the efforts of SMLI.[59]

The present case is in stark contrast with *SMLI v. BCDA*. Firstly, the process contemplated in *SMLI v. BCDA* is a Swiss Challenge, which is a hybrid mechanism between the direct negotiation approach and competitive bidding, recognized under NEDA JV Guidelines. It provides for clear guidelines and safeguards to ensure that the government will not be prejudiced with the offer coming from private entities and the best proposal attained. There are several detailed steps in the Swiss Challenge, which require the thorough investigation, study, and negotiations of unsolicited proposals from private entities.

On the other hand, in the case at bench, there are no clear guidelines upon which the 1983 Deed of Sale was based. It merely stated "upon recommendation of the Special Panel created by the LRT Committee on Land and Property Acquisition [the vendee] agrees that the owners of Isetann and as Lessee of the President Hotel ... (Joy Mart Consolidated Corp.) should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property." Evidently, there is no clear legal rule or guideline upon which the purported whereas clause was sourced. Without any guiding principle to determine whether the alleged right of first refusal was legal, beneficial to the government, and protected against irregularity, the validity of such whereas clause is suspect.

Second, in *SMLI v. BCDA*, therein private entity exerted time, effort, and resources in preparation for the competitive challenge. Particularly, SMLI posted a security bond in the amount of P187 Million, under NEDA JV Guidelines, pursuant to the competitive challenge.

In contrast, here, it is doubtful that Joy Mart even exerted any effort and resource to secure the whereas clause in the 1983 Deed of Sale. As discussed above, there is an iota of evidence said deed of sale provided the consideration given by Joy Mart in exchange for the whereas clause.

Notably, even the CA could not categorically state the consideration given by Joy Mart in exchange for the grant of the purported right of first refusal in the whereas clause. The CA merely surmised that the grant of the said right in favor of Joy Mart "is, in a way, the government's show of gratitude for the former's act of voluntarily cooperating with the government in its pursuit to establish an LRT system." Obviously, the "gratitude" and "cooperation" of Joy Mart cannot be construed on the same level as the efforts, time, negotiations, and P187 Million security bond posted by the private entity in *SMLI v. BCDA*.

Conclusion

A vested right is defined as one which is absolute, complete and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency.[60] In this case, I do not find that the purported right of first option under the whereas clause of the 1983 Deed of Sale can be treated as a vested right in favor of Joy Mart. There are a lot of impediments to the said right, such as its violation of the mandatory policy on competitive public bidding; lack of interest on the object, on which the alleged right of first refusal is based; the subsequent acts of Joy Mart, which run contrary to its purported right; and lack of concrete consideration in exchange for such right of first option.

If the whereas clause in the 1983 Deed of Sale does not provide a vested right in favor of Joy Mart against LRTA, then what is it? In my view, due to its multiple defects, it should be treated plainly as a whereas clause – a preambulatory clause that cannot impose a binding obligation or limitation on the contracting parties; it is not an essential part of an act, nor does it enlarge nor confer powers.[61]

I vote to GRANT the petition of the Light Rail Transit Authority in G.R. No. 211281 and DENY the petition of Joy Mart Consolidated, Inc. in G.R. No. 212602.

[*] Also referred to as Joy Mart Consolidated Corp. in some parts of the rollo.

[1] Rollo (G.R. No. 211281), pp. 33-51; penned by Associate Justice Normandie B. Pizarro, with Presiding Justice Andres B. Reyes, Jr. (retired Member of the Court) and Associate Justice Manuel M. Barrios, concurring.

[2] Id. at 11.

[3] Id. at 34-35.

[4] Id. at 78-83.

[5] Id. at 79.

[6] Id. at 11.

[7] Id.

[8] Id.

[9] Id.

[10] Id. at 36.

[11] Id.

[12] Id. at 11.

[13] Id. at 13.

[14] Id. at 11. In the CA Decision, the CA states that the area developed by Phoenix was 543.75 sq. m. (see rollo [G.R. No. 211281], p. 46).

[15] Id.

[16] Id. at 126.

[17] Id. at 12.

[18] Id. at 41.

[19] Id. at 47.

[20] Id. at 23.

[21] Rollo (G.R. No. 212602), p. 15.

[22] Rollo (G.R. No. 211281), pp. 78-83.

[23] Id. at 79.

[24] Dissenting Opinion, pp. 10-11.

[25] Polytechnic University of the Philippines v. Golden Horizon Realty Corp., 629 Phil. 462, 474 (2010).

[26] Power Sector Assets and Liabilities Management Corp. v. Pozzolanic Philippines, Inc., 671 Phil. 731, 756

(2011).

[27] Villegas v. Court of Appeals, 530 Phil. 671, 685 (2006).

[28] Power Sector Assets and Liabilities Management Corp. v. Pozzolanic Philippines, Inc., supra at 757.

[29] Osmeña III v. Power Sector Assets and Liabilities Management Corp., 770 Phil. 409, 431 (2015).

[30] National Power Corp. v. Civil Service Commission, 679 Phil. 487, 490-491 (2012).

[31] 544 Phil. 645 (2007).

[32] Id. at 679-683.

[33] 718 Phil. 660 (2013).

[34] Id. at 672-674.

[35] Supra note 26.

[36] Id. at 758.

[37] Supra note 33.

[38] Supra note 29.

[39] 458 Phil. 581 (2003).

[40] Rollo (G.R. No. 211281), p. 78.

[41] Id. at 35.

[42] Id. at 11.

[43] Id. at 57-69.

[44] Id. at 79.

[45] Id.

[46] 549 Phil. 641 (2007).

[47] Id. at 654.

[48] Ponencia, p. 15.

[49] Rollo (G.R. No. 211281), p. 11.

[50] Id.

[51] Ponencia, p. 16.

[52] De los Santos v. Vibar, 580 Phil. 393, 404 (2008).

[53] 741 Phil. 269 (2014).

[54] Dissenting Opinion, p. 13.

[55] Id. at 15.

[56] SM Land, Inc. v. Bases Conversion and Development Authority, supra note 53 at 282.

[57] Id. at 282-283.

[58] Id. at 283-285.

[59] Id. at 309-310.

[60] *Bernabe v. Alejo*, 424 Phil. 933, 940-941 (2002).

[61] *Kuwait Airways Corp. v. Philippine Airlines, Inc.*, 605 Phil. 474, 487 (2009).

G.R. No. 211281 - LIGHT RAIL TRANSIT AUTHORITY (LRTA) v. JOYMART CONSOLIDATED INC.[*] and ISETANN DEPARTMENT STORE, INC.

G.R. No. 212602 - JOYMART CONSOLIDATED INC. and ISETANN DEPARTMENT STORE, INC. v. LIGHT RAIL TRANSIT AUTHORITY and PHOENIX OMEGA DEVELOPMENT CORP.

DISSENT

LAZARO-JAVIER, J.:

The Cases

In G.R. No. 211281, the Light Rail Transit Authority (LRTA) assails the Decision[1] dated February 6, 2014 of the Court of Appeals in CA-G.R. CV No. 100000 entitled *Joy Mart Consolidated, Inc. and Isetann Department Store, Inc. v. Light Rail Transit Authority and Phoenix Omega Development and Management Corporation*, upholding the right of first option of Joy Mart Consolidated Corporation (Joy Mart) and Isetann Department Store, Inc., (Isetann) to develop the consolidated block of the LRT Carriedo Station.

In G.R. No. 212602, Joy Mart and Isetann assail the same disposition of the Court of Appeals, as well as its Resolution[2] dated May 19, 2014 denying reconsideration, insofar as said rulings dismissed their claim for damages.

Antecedents

The factual antecedents of the cases until 1992 are also recited in *Joy Mart Consolidated Corporation v. Court of Appeals*,[3] docketed G.R. No. 88705.

In 1978-79, the government identified certain properties which it had to acquire in furtherance of its Light Rail Transit (LRT) system project. These properties included Joy Mart's property on Carriedo Street, Sta. Cruz, Manila where the Isetann Department Store is located, and three (3) other adjoining parcels of land with a total area of 1,611 square meters under lease by Joy Mart. As a gesture of cooperation, Joy Mart consented to sell the property and give up its leasehold rights over the adjacent properties, provided, it would be given the first option to redevelop the entire area of the LRT Carriedo Station (the consolidated block) measuring 2,014.9 square meters.

On September 8, 1982, while negotiations were ongoing between Joy Mart and LRTA, the latter entered into a contract with the Philippine General Hospital Foundation, Inc. (PGHFI), granting PGHFI the right to develop the areas adjacent to LRT stations, and manage and operate the concessions to be established thereon.

Under Deed of Absolute Sale dated February 22, 1983, Joy Mart, in consideration of P44,000,000.00 plus the right of first option, conveyed its property and waived its leasehold rights on the adjacent lots in favor of the government through the LRTA. The deed pertinently read:

WHEREAS, the VENDEE, upon recommendation of the Special Panel created by the LRT Committee on

Land and Property Acquisition agrees that the owners of Isetann and as Lessee of the President Hotel – (Joy Mart Consolidated Corp.) should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property. (Emphases supplied)

x x x x

As partial compliance with the first option right of Joy Mart, PGHFI subleased to Joy Mart the consolidated block for purposes of constructing a multi-storey building. But when Joy Mart submitted its building plans to LRTA, the latter informed Joy Mart that the proposed building should occupy 1,141.20 square meters only as the rest would be used as a set-back area or open space for the commuting public. LRTA nevertheless assured Joy Mart that in the event any portion of the consolidated block would be released for redevelopment, the right of first option of Joy Mart would be respected.

On August 30, 1984, the sublease agreement between Joy Mart and PGHFI was amended to increase the leased area to 1,461.7 square meters, increase the monthly rental, and include an escalation clause. Joy Mart was also made to pay "goodwill" in the sum of P3,000,000.00. Thereafter, Joy Mart constructed an eight-storey building on the property. Joy Mart had to borrow P50,000,000.00 for the project, the viability of which was conditioned upon Joy Mart maintaining its right of first option to redevelop and occupy any available area in the consolidated block.

On April 8, 1986, LRTA notified Joy Mart of the cancellation of the sublease agreement and directed the latter to pay monthly rent to LRTA instead. Joy Mart, after initial protestation, complied with the directive.

As it was, however, on November 28, 1986, LRTA entered into a Commercial Stalls Concession Contract with Phoenix Omega Development and Management Corporation (Phoenix) for a period of twenty-five (25) years (renewable for the same period), awarding to Phoenix all the areas and commercial spaces within three (3) LRT terminals and fifteen (15) LRT stations, including LRT Carriedo Station. Joy Mart only learned of the contract between LRTA and Phoenix when construction activities commenced within the consolidated block in the third quarter of 1987. Joy Mart protested with the LRTA and reiterated its right of first option to redevelop the subject area. But its protestations fell on deaf ears.

Thus, by Complaint[4] dated August 20, 1987, Joy Mart (later joined by its assignee Isetann under an amended complaint)[5] sued the LRTA and Phoenix before the Regional Trial Court – Branch 32, Manila for specific performance, injunction, and damages, docketed as Civil Case No. 87-41731. They essentially claimed that LRTA violated Joy Mart's right of first option when LRTA awarded the commercial stalls contract to Phoenix. Joy Mart and Isetann, therefore, prayed that LRTA is directed to award to them, by sale or lease, the redevelopment of the consolidated block, and that LRTA and Phoenix be held liable to them for damages in the amount of P489,559,288.80 for opportunity losses.

In Answer,[6] LRTA admitted the existence and due execution of the Deed of Absolute Sale dated February 22, 1983, as well as the first option provision therein. But LRTA asserted that the provision was not a categorical commitment as it was only found in the whereas clause. At any rate, Joy Mart has waived its supposed right of first option when it entered into a sublease agreement with PGHFI. Too, Joy Mart's rights as sublessee cannot go beyond those of PGHFI. As it was, however, its (LRTA's) lease with PGHFI had already been cancelled.

As for Phoenix's construction and lease of commercial stalls within the consolidated block, Joy Mart and Isetann may no longer object thereto as these were validly subjected to public bidding where Joy Mart and Isetann did not participate. In any event, the concession contract is not a lease and could not have therefore violated Joy Mart's supposed right of first option. As Joy Mart and Isetann unduly dragged LRTA to court despite the utter baselessness of their claims, LRTA, by way of counterclaim, sought payment of P50,000.00 for attorney's fees and litigation expenses.

For its part, Phoenix[7] essentially echoed LRTA's defenses. It also sought actual damages of P250,000.00, loss of rentals at P336,900.00 per month, damage for stalls construction of P2,257,000.00, damages for loss of credibility and business opportunities as may be proven in court, and attorney's fees of P75,000.00.

On September 25, 1987, the trial court issued a writ of preliminary injunction directing Phoenix to cease and desist from constructing on the consolidated block. On July 6, 1988, the trial court dissolved the writ of preliminary injunction. Joy Mart and Isetann assailed the dissolution of the writ before the Court of Appeals via CA-G.R. SP No. 115618.

The Court of Appeals initially issued a writ of injunction against Phoenix who, despite receipt, proceeded with its construction activities. But eventually, under Decision dated February 28, 1989, the Court of Appeals ruled in favor of LRTA and Phoenix.

Hence, Joy Mart and Isetann appealed further to the Court via G.R. No. 88705. By Decision dated June 11, 1992, the Court ruled in favor of Joy Mart and Isetann. By then, however, Phoenix had already finished its construction activities and allowed tenants to move in and occupy the commercial stalls in the consolidated block. Consequently, the Court directed that the rentals be deposited with the trial court until final judgment, thus:

WHEREFORE, the petition for review is GRANTED. The Court of Appeals' decision dated February 28, 1989 in CA-G.R. SP No. 115618, dismissing Joy Mart's petition for certiorari and upholding the dissolution by the Regional Trial Court of Manila, Branch 32, of the preliminary writ of injunction in Civil Case No. 87-41731, is hereby annulled and set aside and the preliminary writ of injunction issued by the trial court on September 23, 1987 in Civil Case No. 87-41731 is reinstated. However, if in the meantime the construction and occupancy of the private respondents' commercial stalls sought to be stopped by the injunction have been completed, the rentals received by the private respondents after the finality of this decision shall be deposited by them, or the lessees, in the Regional Trial Court to await the final judgment in Civil Case No. 87-41731. Costs against the private respondents.

The Court of Appeals, Ninth Division, is ordered to hear and decide Joy Mart's petition to declare Phoenix in contempt of court for having allegedly defied and disobeyed the Court's temporary restraining order of September 15, 1988 in CA-G.R. SP No. 115618.

SO ORDERED.

Decision of the Regional Trial Court

By Decision[8] dated July 16, 2012, the trial court dismissed the complaint and counterclaims, viz.:

WHEREFORE, judgment is hereby rendered dismissing the instant complaint for Specific Performance, Injunction[,] and Damages filed by the plaintiffs against the defendants. The preliminary injunction issued by the court is permanently dissolved.

Further, the counter-claims interposed by the defendants are likewise dismissed. (Emphasis supplied)

SO ORDERED.

The trial court held that the LRTA is a government entity and the subject matter, i.e., the grant of right of first option, involves a public contract which required public bidding. At any rate, the purported right would have been observed had Joy Mart and Isetann participated in the public bidding for the commercial stalls contract as Phoenix did. Their failure to do so constituted a waiver of the so-called right of first option.

As for the alleged breach of the sublease agreement, Joy Mart and Isetann could not invoke the provisions of said agreement against LRTA and Phoenix as the latter were not privies thereto. The proper party, therefore, was

PGHFI. More, the sublease agreement and its addendum had already been cancelled and rescinded upon LRTA's termination of its lease contract with PGHFI.

The trial court denied reconsideration by Order[9] dated November 20, 2012.

The Proceedings before the Court of Appeals

On appeal, Joy Mart and Isetann faulted the trial court in ruling that their failure to participate in the public bidding was a waiver of the right of first option. Too, it was not necessary to implead PGHFI as party defendant in the proceedings below.

LRTA and Phoenix did not file their respective briefs. Consequently, the appeal was deemed submitted for decision.

Decision of the Court of Appeals

By Decision[10] dated February 6, 2014 in CA-G.R. CV No. 100000, the Court of Appeals granted the appeal of Joy Mart and Isetann. It also awarded the rentals deposited with the trial court by virtue of our ruling in G.R. No. 88705 in their favor, viz.:

WHEREFORE, the appeal is GRANTED. The assailed Decision is REVERSED and SET ASIDE. The complaint in Civil Case No. 87-41731 is GRANTED. Accordingly, the Light Rail Transit Authority is ordered to comply with the parties' 1983 Deed of Sale by granting Joy Mart Consolidated Corporation and/or Isetann Department Store, Inc. the right to redevelop the entire area denominated as the consolidated block of the LRT Carriedo Station and to pay to the latter, by way of compensatory damages, the rentals thereon which are deposited, by way of consignment, with the Regional Trial Court, National Capital Judicial Region, Br. 32, Manila, in Civil Case No. 87-41731. With costs.

SO ORDERED.

First. Joy Mart and Isetann would not have parted with their properties were it not for the right of first option granted by the LRTA. It was not merely an interest on the consolidated block under the Deed of Absolute Sale dated February 22, 1983, but a vested right protected by law. In both law and jurisprudence, the right of first refusal is upheld in whose favor the right is granted, even those granted to private corporations concerning lots they are leasing from the government. Verily, the right of first option to Joy Mart must be respected.

Second. The award of contracts through public bidding is a requirement to promote good governance and transparency; bluntly stated, to prevent favoritism. There is no favoritism here because the "first option" was not an undue advantage to Joy Mart, but a price to pay to further the interest of the government -- the establishment of the LRT system. Hence, the "first option" was an integral, indivisible, and inseparable part of the Deed of Absolute Sale dated February 22, 1983. Consistent with such stipulation, LRTA should have offered the redevelopment first to Joy Mart and/or Isetann. Only after the latter's failure to exercise such right could LRTA lawfully put up the same for public bidding. To require competitive public bidding is to trample upon the vested contractual right of Joy Mart and Isetann.[11]

Finally. Phoenix and LRTA acted in bad faith. Despite receipt of the injunctive order from the Court of Appeals, Phoenix continued its construction of commercial stalls within the consolidated block and allowed tenants to occupy them. LRTA was no better. It allowed Phoenix to do its activities despite its assurances to Joy Mart that it would respect the latter's right of first option. Verily, the rentals derived by Phoenix and deposited in the Regional Trial Court should inure to the benefit of Joy Mart and Isetann as compensatory damages in accordance with Article 2199 of the Civil Code.[12]

LRTA filed a Petition for Review[13] sans a motion for reconsideration before the Court via G.R. No. 211281 entitled *LRTA v. Joy Mart Consolidated Inc. and Isetann Department Store, Inc.*

Meanwhile, Joy Mart and Isetann moved for partial reconsideration, praying for damages in the amount of P489,559,288.80 as consequence of its failure to develop the consolidated block. Phoenix likewise filed a motion for reconsideration seeking a reversal of the decision. Both motions were denied under Resolution[14] dated May 19, 2014.

Thus, Joy Mart and Isetann filed with the Court a Petition for Review on Certiorari[15] entitled *Joy Mart Consolidated Corp. and Isetann Department Store, Inc. v. LRTA and Phoenix Omega Development and Management Corporation* docketed G.R. No. 212602.

Eventually, both petitions got consolidated.

The Present Petitions

In G.R. No. 211281, LRTA maintains that Joy Mart and Isetann's so called right of "right of first option" should be struck down and rendered ineffective as it is repugnant to the policy of requiring public bidding for government contracts. There is nothing in the records which shows that LRTA is bound by the mere whereas clause in the Deed of Absolute Sale dated February 22, 1983. At any rate, an option contract, to be valid, must be a separate agreement and must contain a period. More, Joy Mart and Isetann are guilty of laches and/or estoppel because they did not participate in the public bidding for the concession of commercial stalls. Finally, Joy Mart and Isetann are not entitled to damages for the supposed breach of the sublease agreement for not only are LRTA and Phoenix non-parties thereto, said contract had already been cancelled in 1986.

In its Comment,[16] Joy Mart and Isetann defend the assailed decision. They argue that public bidding is inapplicable here and that LRTA already admitted the existence of their right of first option. Said right was even validated by the trial court, albeit they were allegedly guilty of estoppel. More, the right of first option was not contained in a separate agreement as the nature of the transaction precludes the execution of a separate option agreement -- it requires the transfer of the properties first before redevelopment. Too, mere execution of the sublease agreement with PGFHI and failure to participate in the bidding for the commercial stalls contract did not render them guilty of laches and/or estoppel. Besides, LRTA should have notified them of the project first if indeed it respected their right of first option.

On the part of Phoenix,[17] it merely reiterates the arguments of LRTA and alleges that the award of damages awarded to Joy Mart and Isetann was based on unrealized, hypothetical, and illusory profits.

In G.R. No. 212602, Joy Mart and Isetann argue that the damages awarded to them were the same as those given to Joy Mart in G.R. No. 88705. Since then, Joy Mart has suffered additional damages in the amount of P489,559,288.80 for having been deprived of the opportunity to develop the consolidated block, an injury which the Court of Appeals failed to recognize.

LRTA[18] ripostes that the award of damages is baseless and an improper subject of review under Rule 45 of the Rules of Court[19] as it is a question of fact.

Joy Mart and Isetann have the right of first option to develop the consolidated block

Freedom of contract is both a constitutional and statutory right, and the contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

Here, it is undisputed that the Deed of Absolute Sale dated February 22, 1983[20] was executed freely and

willingly between LRTA and Joy Mart. Under this agreement, Joy Mart sold its property and transferred its leasehold rights to LRTA. In exchange, LRTA agreed to pay P44,000,000.00 and granted Joy Mart (and Isetann) the right of first option to redevelop the consolidated block measuring 2,014.9 square meters. To stress, the contract pertinently reads:

WHEREAS, the VENDEE, upon recommendation of the Special Panel created by the LRT Committee on Land and Property Acquisition agrees that the owners of Isetann and as Lessee of the President Hotel – (Joy Mart Consolidated Corp.) should be given the first option in the redevelopment of the consolidated block, notwithstanding the compensation for their property. (Emphases supplied)

x x x x

As keenly observed by the Court of Appeals, LRTA did not give the right of first option *ex gratia* but as part of the consideration for Joy Mart's properties. Indeed, Joy Mart would not have parted with its property and leasehold rights were it not for the right of first option granted to it by LRTA.

The fact that the right of first option was embodied in the *whereas* clause instead of a separate agreement is of no moment. For it remains that LRTA was under obligation to offer the development project to Joy Mart first before offering it to anyone else. This is what good faith compliance with the Deed of Absolute Sale dated February 22, 1983 requires.

True, the Deed of Absolute Sale dated February 22, 1983, does not specify the period within which Joy Mart and Isetann's right of first option may be exercised. But this does not automatically render said right void or otherwise unenforceable; it merely places Joy Mart and Isetann's right within the concept of a "right of first refusal."

Tuazon v. Del Rosario-Suarez[21] differentiates an option contract from the right of first refusal, thus:

In *Beaumont v. Prieto*, the nature of an option contract is explained thus:

In his *Law Dictionary*, edition of 1897, Bouvier defines an option as a contract, in the following language:

'A contract by virtue of which A, in consideration of the payment of a certain sum to B, acquires the privilege of buying from, or selling to, B certain securities or properties within a limited time at a specified price. (*Story vs. Salamon*, 71 N. Y., 420.)'

From Vol. 6, page 5001, of the work "*Words and Phrases*," citing the case of *Ide vs. Leiser* (24 Pac., 695; 10 Mont., 5; 24 Am. St. Rep., 17) the following quotation has been taken:

'An agreement in writing to give a person the 'option' to purchase lands within a given time at a named price is neither a sale nor an agreement to sell. It is simply a contract by which the owner of property agrees with another person that he shall have the right to buy his property at a fixed price within a certain time. He does not sell his land; he does not then agree to sell it; but he does sell something; that is, the right or privilege to buy at the election or option of the other party. The second party gets in *praesenti*, not lands, nor an agreement that he shall have lands, but he does get something of value; that is, the right to call for and receive lands if he elects. The owner parts with his right to sell his lands, except to the second party, for a limited period. The second party receives this right, or rather, from his point of view, he receives the right to elect to buy.

But the two definitions above-cited refer to the contract of option, or, what amounts to the same thing, to the case where there was cause or consideration for the obligation x x x.

On the other hand, in *Ang Yu Asuncion v. Court of Appeals*, an elucidation on the "right of first refusal" was made thus:

In the law on sales, the so-called 'right of first refusal' is an innovative juridical relation. Needless to point out,

it cannot be deemed a perfected contract of sale under Article 1458 of the Civil Code. Neither can the right of first refusal, understood in its normal concept, per se be brought within the purview of an option under the second paragraph of Article 1479, aforementioned, or possibly of an offer under Article 1319 of the same Code. An option or an offer would require, among other things, a clear certainty on both the object and the cause or consideration of the envisioned contract. In a right of first refusal, while the object might be made determinate, the exercise of the right, however, would be dependent not only on the grantor's eventual intention to enter into a binding juridical relation with another but also on terms, including the price, that obviously are yet to be later firmed up. Prior thereto, it can at best be so described as merely belonging to a class of preparatory juridical relations governed not by contracts (since the essential elements to establish the *vinculum juris* would still be indefinite and inconclusive) but by, among other laws of general application, the pertinent scattered provisions of the Civil Code on human conduct.

Even on the premise that such right of first refusal has been decreed under a final judgment, like here, its breach cannot justify correspondingly an issuance of a writ of execution under a judgment that merely recognizes its existence, nor would it sanction an action for specific performance without thereby negating the indispensable element of consensuality in the perfection of contracts. It is not to say, however, that the right of first refusal would be inconsequential for, such as already intimated above, an unjustified disregard thereof, given, for instance, the circumstances expressed in Article 19 of the Civil Code, can warrant a recovery for damages.

From the foregoing, it is thus clear that an option contract is entirely different and distinct from a right of first refusal in that in the former, the option granted to the offeree is for a fixed period and at a determined price. Lacking these two essential requisites, what is involved is only a right of first refusal. (Citations omitted, emphases and underscoring supplied)[22]

x x x x

Verily, "right of first option" is actually a misnomer in this case. For in the absence of a specific period to exercise such right, Joy Mart and Isetann's right is actually one of first refusal. There is no fixed timeframe for them to exercise such right as it first required LRTA to offer them the redevelopment contract on specific terms.

Though different from an option contract, contractual stipulations on the right of first refusal are just as valid and binding. Here, the LRTA bound itself to respect Joy Mart and Isetann's right of first refusal upon signing the Deed of Absolute Sale was executed on February 22, 1983. Whereupon, Joy Mart's "right of first option" became a vested right protected by law, viz.:

A vested right is defined as one which is absolute, complete[,] and unconditional, to the exercise of which no obstacle exists, and which is immediate and perfect in itself and not dependent upon a contingency. The term "vested right" expresses the concept of present fixed interest which, in right reason and natural justice, should be protected against arbitrary State action, or an innately just and imperative right which enlightened free society, sensitive to inherent and irrefragable individual rights, cannot deny.[23] x x x.

x x x x

Indeed, the LRTA, which freely signed the Deed of Absolute Sale dated February 22, 1983, cannot now be permitted to renege on its obligation under the contract simply because it has changed its mind. As Article 1308 of the Civil Code decrees: a contract is binding on both contracting parties; its validity or compliance cannot be left to the will of one of them.[24]

The right also subsists despite the cancellation of the lease between PGHFI and LRTA as well as the sublease agreement as its existence was not dependent thereon. In fact, the sublease agreement, as correctly found by the Court of Appeals, was executed in partial compliance with Joy Mart's right of first option and not the other way

around.

The LRTA and Phoenix acted in bad faith and are therefore estopped from denying Joy Mart and Isetann's right of first option

The LRTA and Phoenix nevertheless assert that the grant of the right of first option to develop the consolidated block should have undergone public bidding. To do otherwise would run afoul the government policy of requiring public bidding for government contracts.

I do not agree.

SM Land, Inc. (SMLI) v. Bases Conversion Development Authority (BCDA)[25] is apropos. There, petitioner SMLI submitted an unsolicited proposal for the development of Bonifacio South Property located in Taguig City to BCDA. After a successful negotiation, BCDA undertook to subject SMLI's proposal to competitive challenge only to renege on its commitments later on and eventually resort to public bidding. The Court ultimately ruled in favor of SMLI and directed BCDA to comply with its contractual obligations. As held, there must be a careful balance between what is best for the government and what is fair, thus:

Public bidding may generally be more preferred than a competitive challenge for reasons explained in the dissent. However, there must be a careful balance between what is best for the government and what is fair to the persons it deals with. Otherwise, any and all unsolicited proposal can be cancellable, despite its acceptance, by the mere allegation that straight bidding is what public interest so requires. Worse, the government can very well ignore, at will, its contractual obligations by invoking that familiar mantra – public interest.

x x x x

It is, thus, recognized that there are instances wherein the agreement stemming from faithful negotiations of the parties should be upheld, especially so when, as in this case, the alleged adverse effects on the remain government speculative at best. x x x

x x x x

Here, basic considerations of justice and fair play compel us to uphold the right of first option of Joy Mart and Isetann. For the actuations of LRTA clearly amounted to bad faith.[26] As such, it is estopped from denying Joy Mart's right of first option. Republic v. Court of Appeals[27] elucidates:

Estoppel Against the Government

The general rule is that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. However, like all general rules, this is also subject to exception, viz.:

Estoppels against the public are little favored. They should not be invoked except in rare and unusual circumstances, and may not be invoked where they would operate to defeat the effective operation of a policy adopted to protect the public. They must be applied with circumspection and should be applied only in those special cases where the interests of justice clearly require it. Nevertheless, the government must not be allowed to deal dishonorably or capriciously with its citizens, and must not play an ignoble part or do a shabby thing; and subject to limitations x x x, the doctrine of equitable estoppel may be invoked against public authorities as well as against private individuals.

In Republic v. Sandiganbayan, the government, in its effort to recover ill-gotten wealth, tried to skirt the application of estoppel against it by invoking a specific constitutional provision. The Court countered:

We agree with the statement that the State is immune from estoppel, but this concept is understood to refer to acts and mistakes of its officials especially those which are irregular (Sharp International Marketing vs. Court

of Appeals, 201 SCRA 299; 306 [1991]; Republic v. Aquino, 120 SCRA 186 [1983]), which peculiar circumstances are absent in this case at bar. Although the State's right of action to recover ill-gotten wealth is not vulnerable to estoppel[;] it is non sequitur to suggest that a contract, freely and in good faith executed between the parties thereto is susceptible to disturbance ad infinitum. A different interpretation will lead to the absurd scenario of permitting a party to unilaterally jettison a compromise agreement which is supposed to have the authority of res judicata (Article 2037, New Civil Code), and like any other contract, has the force of law between parties thereto (Article 1159, New Civil Code; *Hernaez vs. Kao*, 17 SCRA 296 [1996]; 6 Padilla, Civil Code Annotated, 7th ed., 1987, p. 711; 3 Aquino, Civil Code, 1990 ed., p. 463). x x x

x x x x

The Court further declared that "(t)he real office of the equitable norm of estoppel is limited to supply[ing] deficiency in the law, but it should not supplant positive law." [28] (Emphases and italics supplied)

x x x x

Further, we should reckon anew with *SMLI v. BCDA*, where the Court, applying the above-cited exception, ruled that BCDA was estopped from conducting public bidding:

Clearly, estoppel against the government can be invoked in this case. This is in view of the fact that despite BCDA's repeated assurances that it would respect SMLI's rights as an original proponent, and after putting the latter to considerable trouble and expense, BCDA went back on its word to comply with its obligations under their agreement and instead ultimately cancelled the same. BCDA's capriciousness becomes all the more evident in its conflicting statements as regards whether or not SMLI's proposal would be advantageous to the government. (Emphasis and italics supplied) [29]

x x x x

Here, LRTA accepted Joy Mart's offer to sell its prime properties and leasehold rights for P44,000,000.00 plus the right of first option to develop the consolidated block. In partial compliance, LRTA leased the consolidated block to PGHFI which, in turn, subleased a portion of it to Joy Mart. But when Joy Mart gave its proposal to LRTA, the latter sought to reduce the subleased area. Joy Mart agreed as LRTA guaranteed that it would respect Joy Mart's right of first option in the future. But instead of negotiating with Joy Mart first regarding the redevelopment contract, LRTA chipped away on Joy Mart's right by cancelling the PGHFI lease agreement and conducting public bidding over the consolidated block. It proceeded with its Commercial Stalls Concession Contract with Phoenix and tolerated the latter's construction activities despite the issuance of a restraining order against such activities in CA G.R. SP No. 115618. As it was, LRTA and Phoenix showed no respect for the Court of Appeals' issuance of a Temporary Restraining Order. LRTA's bad faith became all the more evident when it acted as if Joy Mart (and Isetann) never gave anything in return for the right of first option.

Clearly, after Joy Mart cooperated with LRTA, negotiated the terms of the sale, parted with its properties and leasehold rights, LRTA arbitrarily chose to forget that it has a standing and valid obligation to offer to Joy Mart the development of the consolidated block first before offering the contract to anyone else. Thus, as the Court of Appeals aptly put it, we will not allow the government to deal dishonorably or capriciously with its citizens. It must not play an ignoble part or do a shabby thing. [30]

To repeat, LRTA was the one in bad faith. Its double-dealing actuations placed Joy Mart and Isetann in this predicament. Joy Mart (now Isetann) was the peaceful owner of properties and holder of leasehold rights. It cooperated and negotiated in good faith for the planned LRT System to come to fruition, only to be dishonorably treated this way. Too, LRTA tolerated the open defiance or blatant disobedience of Phoenix of the restraining order in CA-G.R. SP No. 115618.

Phoenix was also in bad faith. As found by the Court of Appeals, it continued the construction of stalls and allowed its tenants to occupy them despite the restraining order issued by the Court of Appeals. We even directed the Court of Appeals to hear and decide Joy Mart and Isetann's petition to declare Phoenix in contempt of court in view of its violation.

Hence, to rule in favor of LRTA and Phoenix now is to allow them to profit from their own misdeeds. As the Court invariably warned: "Parties who do not come to court with clean hands cannot be allowed to profit from their own wrongdoing. The action (or inaction) of the party seeking equity must be "free from fault, and he must have done nothing to lull his adversary into repose, thereby obstructing and preventing vigilance on the part of the latter." [31]

So must it be.

Joy Mart and Isetann have not waived their right of first option, nor are they guilty of estoppel and/or laches

The LRTA and Phoenix push their narrative by claiming that Joy Mart and Isetann were guilty of estoppel and/or laches when, despite receiving notice of pre-qualification bidding for the LRT Commercial Stalls on July 21, 1986, Joy Mart and Isetann later failed to object against the conduct of such public bidding. Further, it took Joy Mart and Isetann four (4) years from the execution of the Deed of Absolute Sale in 1983 to file a complaint and enforce their so-called right of first option.

The argument does not persuade.

In *Republic v. Sundiam*, [32] the Court stated that laches is the failure or neglect, for an unreasonable and unexplained length of time, to do that which, by exercising due diligence, could or should have been done earlier. Stated differently, it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it. The concept of estoppel, on the other hand, has already been explained above.

Here, Joy Mart and Isetann are guilty of neither laches nor estoppel.

Joy Mart and Isetann consistently guarded their right of first option under the Deed of Absolute Sale dated February 22, 1983, through the cases they filed and the injunctive relief they have invariably sought. This is an incontrovertible fact documented and set in stone in G.R. No. 88705.

At any rate, it is baffling why LRTA would fault Joy Mart and Isetann for filing the complaint in 1987 when the violation of their vested right only occurred in 1986 when LRTA failed to honor their right of first refusal before subjecting the consolidated block, along with its other terminals and stations, to public bidding under a commercial stall concessions contract. Surely, this one-year period it took Joy Mart and Isetann to file the complaint could hardly constitute as laches. More so, since Joy Mart and Isetann only discovered the breach in the third quarter of 1987 when Phoenix's construction activities commenced. Meantime, Joy Mart was busy constructing its own eight-storey building.

LRTA and Phoenix harp on the theory that their failure to participate in the public bidding for the commercial stalls constituted a waiver of the so-called "right of first option." But to recall, the right of first option only covered the consolidated block at LRT Carriedo Station. Joy Mart and Isetann were only prepared to develop that section as far as the Deed of Absolute Sale dated February 22, 1983 was concerned. On the other hand, the Commercial Stalls Concession Contract extended to three (3) LRT terminals and fifteen (15) LRT stations. Were Joy Mart and Isetann then supposed to bid for the entire project covering all terminals and stations just to protect their right of first option? Certainly not. For this reason, the Court should have ruled that Joy Mart and Isetann are

not estopped from exercising the right of first option under the contract with LRTA.

Joy Mart and Isetann are entitled to the deposited rental income for 25 years, but not to additional compensatory damages

For violation of Joy Mart and Isetann's right of first option, the Court of Appeals directed the LRTA to:

1)

Comply with the parties' 1983 Deed of Sale by granting Joy Mart and/or Isetann the right to redevelop the entire area of the consolidated block; and

2)

Pay to Joy Mart or Isetann, by way of compensatory damages, the rentals on the consolidated block which were deposited, by way of consignment, with the trial court.

I do not entirely agree with the Court of Appeals.

The characterization of Joy Mart and Isetann's right as one of first refusal is important in determining effects of its breach. On this score, *Rosencor Development Corporation v. Inquiring*[33] elucidates:

In *Guzman, Bocaling and Co., Inc. vs. Bonnevie*, the Court upheld the decision of a lower court ordering the rescission of a deed of sale which violated a right of first refusal granted to one of the parties therein. x x x

x x x x

Subsequently in *Equatorial Realty and Development, Inc. vs. Mayfair Theater, Inc.*, the Court, en banc, with three justices dissenting, ordered the rescission of a contract entered into in violation of a right of first refusal. Using the ruling in *Guzman Bocaling & Co., Inc. vs. Bonnevie* as basis, the Court decreed that since respondent therein had a right of first refusal over the said property, it could only exercise the said right if the fraudulent sale is first set aside or rescinded. x x x

x x x x

In *Parañaque Kings Enterprises, Inc. vs. Court of Appeals*, the Court held that the allegations in a complaint showing violation of a contractual right of "first option or priority to buy the properties subject of the lease" constitute a valid cause of action enforceable by an action for specific performance. Summarizing the rulings in the two previously cited cases, the Court affirmed the nature of and concomitant rights and obligations of parties under a right of first refusal. x x x

x x x x

In the recent case of *Litonjua vs. L&R Corporation*, the Court, also citing the case of *Guzman, Bocaling & Co. vs. Bonnevie*, held that the sale made therein in violation of a right of first refusal embodied in a mortgage contract, was rescissible. x x x

x x x x

Thus, the prevailing doctrine, as enunciated in the cited cases, is that a contract of sale entered into in violation of a right of first refusal of another person, while valid, is rescissible.

There is, however, a circumstance which prevents the application of this doctrine in the case at bench. In the cases cited above, the Court ordered the rescission of sales made in violation of a right of first refusal precisely because the vendees therein could not have acted in good faith as they were aware or should have been aware of the right of first refusal granted to another person by the vendors therein. The rationale for this is found in the provisions of the New Civil Code on rescissible contracts. Under Article 1381 of the New Civil Code

paragraph 3, a contract validly agreed upon may be rescinded if it is "undertaken in fraud of creditors when the latter cannot in any manner collect the claim due them." Moreover, under Article 1385, rescission shall not take place "when the things which are the object of the contract are legally in the possession of third persons who did not act in bad faith."

x x x x

Considering that there is no showing of bad faith on the part of the petitioners, the Court of Appeals thus erred in ordering the rescission of the Deed of Absolute Sale dated September 4, 1990 between petitioner Rosencor and the heirs of the spouses Tiangco. The acquisition by Rosencor of the property subject of the right of first refusal is an obstacle to the action for its rescission where, as in this case, it was shown that Rosencor is in lawful possession of the subject of the contract and that it did not act in bad faith.

This does not mean however that respondents are left without any remedy for the unjustified violation of their right of first refusal. Their remedy however is not an action for the rescission of the Deed of Absolute Sale but an action for damages against the heirs of the spouses Tiangco for the unjustified disregard of their right of first refusal. (Citations omitted and emphases supplied)

x x x x

Verily, the rule is that a contract entered into between two parties in violation of the right of first refusal granted to a third person, is rescissible and must so be rescinded. Upon rescission, the contract would be offered to the holder of the right of first refusal under the same terms and conditions to give full effect to such right. There are circumstances, however, which may prevent rescission, in which case an action for specific performance to enforce the right of first refusal would no longer prosper. In such a case, the holder of the right would be entitled to damages instead.

Here, the Commercial Stalls Concession Contract between LRTA and Phoenix violated Joy Mart and Isetann's right of first refusal. Under normal circumstances, this would warrant the rescission of the concession contract since both LRTA and Phoenix acted in bad faith.

Yet, practical considerations preclude us from rescinding the contract. For the concession contract does not only involve the consolidated block over which Joy Mart and Isetann enjoy the right of first refusal, but extends to three (3) terminals and fourteen (14) other stations.

To recall, the purpose of the rescission is to offer the contract to the holder the right of first refusal under the same terms and conditions. But since Joy Mart and Isetann only enjoy the right insofar as the consolidated block is concerned, it would be too excessive to nullify the entire concession contract extending to three (3) terminals and fourteen (14) other stations just to protect their right over a single one.

More, the concession contract was the subject of public bidding and, therefore, indivisible. Just as how Joy Mart would not have parted with its property were it not for the right of first option, Phoenix, too, may not have bid on the lot were the consolidated block excluded from the coverage of the bid. Thus, even a partial rescission of the concession contract cannot be had.

All told, there are practical obstacles against granting Joy Mart and Isetann's prayer for specific performance. Otherwise stated, Joy Mart and Isetann's right of first refusal may no longer be enforced hereafter. Consequently, damages should be awarded to Joy Mart and Isetann for the loss of its right.

Under Articles 2199[34] and 2200[35] of the Civil Code, actual or compensatory damages are those awarded in satisfaction of or in recompense for loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done.

There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses, and the other is the failure to receive as a benefit that which would have pertained to him/her. In the latter instance, the familiar rule is that damages consisting of unrealized profits, frequently referred to as "ganancias frustradas" or "lucrum cessans," are not to be granted on the basis of mere speculation, conjecture, or surmise, but rather by reference to some reasonably definite standard such as market value, established experience, or direct inference from known circumstances.[36]

Here, the Court of Appeals awarded compensatory damages to Joy Mart and Isetann in the form of rentals deposited with the trial court pursuant to G.R. No. 88705 by Decision dated June 11, 1992, viz.:

WHEREFORE, the petition for review is GRANTED. The Court of Appeals' decision dated February 28, 1989 in CA G.R. SP No. 115618, dismissing Joy Mart's petition for certiorari and upholding the dissolution by the Regional Trial Court of Manila, Branch 32, of the preliminary writ of injunction in Civil Case No. 87-41731, is hereby annulled and set aside and the preliminary writ of injunction issued by the trial court on September 23, 1987 in Civil Case No. 87-41731 is reinstated. However, if in the meantime the construction and occupancy of the private respondents' commercial stalls sought to be stopped by the injunction have been completed, the rentals received by the private respondents after the finality of this decision shall be deposited by them, or the lessees, in the Regional Trial Court to await the final judgment in Civil Case No. 87-41731. Costs against the private respondents.

The Court of Appeals, Ninth Division, is ordered to hear and decide Joy Mart's petition to declare Phoenix in contempt of court for having allegedly defied and disobeyed the Court's temporary restraining order of September 15, 1988 in CA-G.R. SP No. 115618. (Emphases supplied)

SO ORDERED.

Notably, this decision is already final and executory. The award of the deposited rent was conditioned on the final determination of Civil Case No. 87-41731 which we now rule in Joy Mart and Isetann's favor. But we do not agree with Joy Mart and Isetann that this should be a separate award given to them. For this constitutes payment precisely for LRTA's breach of Joy Mart's right of first option.[37] These rentals provide the best approximation of the amount Joy Mart and Isetann would have received had they themselves developed the consolidated block upon exercising said right.

It must be specified though that Joy Mart and Isetann's right to collect rental payment is not perpetual. For hypothetically, even if Joy Mart and Isetann were able to exercise their right of first option and obtained the concession contract over the consolidated block, such contract would have been for a fixed period. As such, it would be more equitable to award rental income for a fixed period as compensatory damages. More so, since Joy Mart and Isetann did not spend a single centavo on the construction costs.

The Court may therefore wield its power to fix the period of Joy Mart and Isetann's collection[38] and equitably award Joy Mart and Isetann with rental payment for the period of twenty-five (25) years based on the Commercial Stalls Concession Contract between LRTA and Phoenix. It is only fitting to fix the period based on said contract as it hindered Joy Mart and Isetann from exercising the right of first option over the subject property.

Joy Mart and Isetann remain unsatisfied, however, and allege that the damages they sustained in this case are different from the damages in the form of rental payments. They, therefore, seek payment of an additional P489,559,288.80 for their opportunity loss.

The argument is utterly devoid of merit.

I agree with Phoenix's observation[39] that Joy Mart and Isetann's computation for its opportunity loss was highly

speculative, based as it was on supposition that they could have earned more had they developed the consolidated property themselves since they would have built more ingress and egress. Though the argument is novel, this is hardly acceptable as there is no direct link between doors and revenues. As the trial court duly noted at the end of the cross-examination of Mr. Go Beng Huy, principal witness of Joy Mart and Isetann:

COURT:

But it is not entirely the number of doors that will drive the consumers to go to a mall. It will also depend first of all, if there is a sale. No. 2, if the items are new and No. 3, if the place is cool. Plus there are so many other factors which are not in your jurisdiction because you are an accounting manager, you are not in sales or advertising. You have to consider many factors and not only the number of doors. There are so many variables, also for example, the prestige of that mall; second, whether the items are, of course, on sale or whether they are cheaper. There are stores for "sosyal" and also for the "masa." [40]

Indeed, there is no reasonable connection between ingress and egress and revenue of a mall. There is a host of external factors which will drive the amount of traffic and sales into or away from a commercial institution. Thus, while the Court commiserates with the plight of Joy Mart and Isetann, we cannot simply grant additional damages based on speculation.

In any event, the deposited rental income for twenty-five (25) years which will inure to the benefit of Joy Mart and Isetann upon finality of this Decision constitutes an equitable substitute for LRTA's compliance with their contractual right under the Deed of Absolute Sale dated February 22, 1983, as well as penalty for LRTA and Phoenix for their utter bad faith. In the end, it would be as though Joy Mart and Isetann themselves had developed the consolidated block and earned income therefrom for about twenty-five (25) years without them having to spend a single centavo on construction costs.

As a result, Light Rail Transit Authority should be ordered to pay Joy Mart Consolidated Corporation and/or Isetann Department Store, Inc., by way of compensatory damages, the rentals equivalent to twenty-five (25) years consigned with the Regional Trial Court-Branch 32, Manila in Civil Case No. 87-41731 from finality of this Decision.

I therefore vote to deny both Petitions.

[*] Also referred to as Joy Mart Consolidated Corp. in some parts of the rollo.

[1] Penned by Associate Justice Normandie B. Pizarro, concurred in by Associate Justices Andres B. Reyes, Jr. and Manuel M. Barrios, G.R. No. 211281, rollo, pp. 32-52.

[2] G.R. No. 212602, rollo, pp. 45-48.

[3] Joy Mart Consolidated Corporation v. Court of Appeals, 285 Phil. 315-328 (1992). This is the Court decision reinstating the writ of preliminary injunction issued by the Regional Trial Court of Manila-Branch 32 against the construction and occupancy of Phoenix Omega Development Corporation of LRTA commercial stalls. The Court reinstated the writ and directed private respondents to deposit the rentals with the Regional Trial Court to await the final judgment in Civil Case No. 87-41731.

[4] G.R. No. 211281, rollo pp. 57-69.

[5] Memorandum of Plaintiff (Joy Mart and Isetann), On March 15, 1991, Joy Mart filed a "Motion to Withdraw Proposed Amended Complaint and To Substantiate the same with the Amended Complaint." In this motion, Joy Mart sought to include Isetann as plaintiff by virtue of a Deed of Assignment. The Amended Complaint was later

on admitted by the Regional Trial Court, id. at 213.

[6] Id. at 140-150.

[7] Id. at 151-156.

[8] Penned by Regional Trial Court Judge Thelma Bunyi-Medina, G.R. No. 211281, id. at 223-249.

[9] Id. at 257.

[10] Id. at 32-52.

[11] Article 1159, Civil Code. Obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[12] Article 2199, Civil Code. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages. (AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, APPROVED ON JUNE 18, 1949).

[13] G.R. No. 211281, rollo, pp. 9-31.

[14] G.R. No. 212602, rollo, pp. 45-48.

[15] Id. at 7-20.

[16] G.R. No. 211281, rollo, pp. 330-338.

[17] Id. at 339-345.

[18] G.R. No. 212602, rollo, pp. 73-80.

[19] Appeal by Certiorari to the Supreme Court, Rule 45 of the Rules of Court.

[20] G.R. No. 211281, rollo, pp. 78-83.

[21] 652 Phil. 274, 283 (2010).

[22] Id. at 283-284.

[23] Heirs of Castro v. Lozada, et al., 693 Phil. 431, 442 (2012).

[24] AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, APPROVED ON JUNE 18, 1949.

[25] 756 Phil. 354, 373-374 (2015).

[26] Article 1159 of the New Civil Code provides that obligations arising from contracts have the force of law between the contracting parties and should be complied with in good faith.

[27] 361 Phil. 319, 329-330 (1999).

[28] Id.

[29] Supra note 25 at 370-371.

[30] Court of Appeals Decision dated February 6, 2014, G.R. No. 211281, rollo, pp. 47-48, citing National Housing Authority v. Baello, et al., 480 Phil. 502, 530 (2004), citing Massaglia v. Commissioner of Internal

Audit, 286 Federal Reporter 2d 259 (1961).

[31] 681 Phil. 485, 489-490 (2012).

[32] G.R. No. 236381, August 27, 2020.

[33] 406 Phil. 565, 579-589 (2001).

[34] Article 2199. Except as provided by law or by stipulation, one is entitled to an adequate compensation only for such pecuniary loss suffered by him as he has duly proved. Such compensation is referred to as actual or compensatory damages. (AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, APPROVED ON JUNE 18, 1949).

[35] Article 2200. Indemnification for damages shall comprehend not only the value of the loss suffered, but also that of the profits which the obligee failed to obtain. (AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, APPROVED ON JUNE 18, 1949).

[36] *Casiño v. Court of Appeals*, 507 Phil. 59, 73 (2005).

[37] *Joy Mart Consolidated Corporation v. Court of Appeals*, G.R. No. 88705, June 11, 1992, explained the propriety of compensatory damages, citing *Filipinas Synthetic Fiber Corp. v. De Los Santos, et al.*, 661 Phil. 99, 112-113 (2011), "Under Article 2199 of the New Civil Code, actual damages include all the natural and probable consequences of the act or omission complained of, classified as one for the loss of what a person already possesses (*daño emergente*) and the other, for the failure to receive, as a benefit, that which would have pertained to him (*lucro cesante*). As expostulated by the Court in *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 52-56 (1998). Under Article 2199 of the Civil Code, actual or compensatory damages are those awarded in satisfaction of, or in recompense for, loss or injury sustained. They proceed from a sense of natural justice and are designed to repair the wrong that has been done, to compensate for the injury inflicted and not to impose a penalty. In actions based on torts or quasi-delicts, actual damages include all the natural and probable consequences of the act or omission complained of. There are two kinds of actual or compensatory damages: one is the loss of what a person already possesses (*daño emergente*), and the other is the failure to receive as a benefit that which would have pertained to him (*lucro cesante*).

[38] Article 1197 of the Civil Code, provides - If the obligation does not fix a period, but from its nature and the circumstances it can be inferred that a period was intended, the courts may fix the duration thereof. The courts shall also fix the duration of the period when it depends upon the will of the debtor. In every case, the courts shall determine such period may under the circumstances have been probably contemplate by the parties. Once fixed by the courts, the period cannot be changed by them. (AN ACT TO ORDAIN AND INSTITUTE THE CIVIL CODE OF THE PHILIPPINES, REPUBLIC ACT NO. 386, APPROVED ON JUNE 18, 1949).

[39] G.R. No. 212602, rollo, pp. 58-63.

[40] TSN, April 12, 2002, p. 19.

ABOUT BATAS.ORG

Study smarter at BATAS.org

The Philippine bar review and law-school companion built around how your brain actually remembers.

The complete Philippine law library - free for everyone.

More than 100,000 Supreme Court decisions, Republic Acts, and executive issuances - full-text searchable, browsable by category and year, and always free. No paywall, no login. This PDF came from it.

Audio case-brief lectures.

Any decision becomes a podcast-style lecture - facts, issues, ruling, and doctrine - with read-along highlighting and a hands-free presentation mode. Study while commuting, working out, or resting your eyes.

Bar review built on the science of memory.

Complete, sequenced courses for all eight bar subjects, narrated like podcasts and reinforced with retrieval practice and spaced review - the study techniques with the strongest evidence behind them.

The full law-school curriculum.

One subscription unlocks the entire J.D. curriculum - every subject, every lesson, with your progress tracked down to the paragraph so you can pick up exactly where you left off, on any device.

Mock exams that tell you where you stand.

Timed multiple-choice exams graded instantly, with per-subject score breakdowns and focus suggestions that point you at your weakest topics first.

A study planner that keeps you on pace.

Set your schedule and BATAS tells you every day whether you are on track for bar day - and exactly which lesson to take next.

Start free at <https://batas.org>

The law library is free forever - and your first lesson is one click away.

The text of this document is an official public record and remains in the public domain. Formatting, presentation, and compilation © 2026 batas.org.

Downloaded free from the batas.org Law Library. Share it freely - the library is free for every law student, bar reviewee, and practitioner.